

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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01 COMMUNIQUE LABORATORY, INC.,	:	
Plaintiff,	:	
	:	
-vs-	:	Case No. 1:10-cv-1007
	:	
	:	
LOGMEIN, INC.,	:	
Defendant.	:	
	:	
-----	:	

V O L U M E 3 (a.m.)

TRIAL TRANSCRIPT

March 20, 2013

Before: Claude M. Hilton, USDC Judge

And a Jury

APPEARANCES:

Thomas H. Shunk, Marc A. Antonetti, John P. Corrado,
A. Neal Seth, Katherine L. McKnight, William T. DeVinney
and Loura Alaverdi, Counsel for the Plaintiff

Wayne L. Stoner, Charles B. Molster, III, Vinita Ferrera and
Rachel Gurvich, Counsel for the Defendant

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1 NOTE: The March 20, 2013 portion of the case begins in
2 the absence of the jury as follows:

3 JURY OUT

4 MR. SHUNK: Good morning, Your Honor. Thanks --

5 THE COURT: Good morning.

6 MR. SHUNK: Thanks for hearing us early. We have two
7 housekeeping matters, and then a broader issue to raise with
8 you.

9 First of all, yesterday during the examination of
10 Mr. Stringer, Mr. Antonetti showed Mr. Stringer and he
11 identified Plaintiff's Exhibit 39. As a result of the
12 discussions, it was agreed that part of it would be redacted and
13 then it would be admissible. We have done that. We now have
14 Plaintiff's Exhibit 39A, and we move its admission.

15 MR. MOLSTER: No objection, Your Honor.

16 THE COURT: All right. It is admitted.

17 MR. SHUNK: And then, secondly, Your Honor, during the
18 examination of Dr. Grimshaw Your Honor suggested that we simply
19 submit a CV instead of a lengthy questioning about his
20 background. We have now created that exhibit as Plaintiff's
21 Exhibit 248. We move its admission.

22 MR. MOLSTER: Can we just get a copy? I don't think we
23 have seen it. If we can just get a copy of it? We will look at
24 it. We are very, very likely not to have an objection, but we
25 would just like to see it first.

1 MR. SHUNK: We will get them one, Your Honor. And I
2 guess we will decide between us whether they have any objection.

3 MR. MOLSTER: We are going to conduct a very thorough
4 review, Your Honor, and get back to you as soon as we possibly
5 can.

6 MR. SHUNK: A broader issue is this, Your Honor. Your
7 Honor's scheduling order in this case says that any exhibit
8 which is not objected to in a timely fashion after the exhibits
9 are exchanged is admitted into evidence.

10 We have been looking for ways to speed this case up
11 because I know that's what Your Honor wants to do. And what we
12 would like to do is to simply admit the rest of the exhibits
13 that we have that were not objected to rather than just throwing
14 them in front of witnesses and taking up the jury's time.

15 THE COURT: That's a great idea.

16 MR. SHUNK: We -- I am going to hand a list to
17 Mr. Molster. I don't expect him to respond to quite a few
18 exhibits right now. But if we understand that the Court
19 generally approves of the idea, then if we have a few issues to
20 discuss, we can raise it with Your Honor.

21 THE COURT: The only thing you need to watch is if
22 there isn't going to be any testimony about the exhibits, you
23 wonder whether they ought to be in or not. But they are
24 probably technically admitted anyway based on the order. But I
25 don't know that they really add to anything to put them in if

1 there hasn't been any testimony on it.

2 MR. MOLSTER: I think that's a fair point, Your Honor.
3 Also, some of these documents have some of the references to, as
4 Mr. Shunk called, the salty language we discussed yesterday, and
5 I'd like to at least redact --

6 THE COURT: I will deal with some redactions in those
7 exhibits if they need to be.

8 MR. MOLSTER: There are some. We have redacted them.
9 We will try to work it out with the other side. If not, we will
10 bring it to Your Honor's attention, if that is agreeable.

11 We have also have the product-by-product financial
12 information issue. Now, we have an agreement and Judge Jones
13 ruled, and hopefully it is okay with Your Honor, that some of
14 this very competitively sensitive, in fact trade secret type
15 information, that the documents will go under seal. And
16 everybody agrees to that.

17 And then, secondly, there may be testimony about those
18 documents today, but it's our understanding from 01 that they
19 are not going to seek live testimony on a product-by-product
20 basis, instead the buckets will basically be accused versus
21 non-accused. We are fine with that.

22 So, I think that's our resolution of that issue, Your
23 Honor.

24 THE COURT: That's fine.

25 MR. MOLSTER: Anything else for you?

1 MR. SHUNK: No, thank you, Your Honor.

2 MR. MOLSTER: I've got a couple of issues. I believe
3 the first witness they are going to call is our CEO, Michael
4 Simon, who they are going to call adversely in their case in
5 chief, which is fine.

6 I have not seen the exhibits yet, but I believe there
7 may be a few issues that -- or three issues that we should talk
8 about. First of all, they may ask him about do you have
9 \$200 million in the bank. We believe that defendant's assets
10 are not relevant to this case. Unless and until they get a
11 judgment, how much money Mr. Simon's company has in the bank is
12 not relevant, it is not a Georgia-Pacific factor.

13 And so, rather than object in front of the jury, we'd
14 like to have that resolved now.

15 MR. SHUNK: Your Honor, it is our argument and our
16 expert witness, Mr. Brlas, will explain this in detail, that the
17 cash that the defendant has on hand is due to the sales of its
18 products. That its profitability number, the bottom line on its
19 financials, is unnaturally low. And that the profitability of
20 their product far exceeds what it actually says on their
21 financials.

22 So, I think it is appropriate for us to explain to the
23 jury, contrary to the defendant's theory that we are asking for
24 amounts that are well in excess of their profits, that, indeed,
25 we are asking for an amount that is less than the marginal

1 profit of these products.

2 THE COURT: Well, what he has in the bank doesn't have
3 anything to do with that.

4 MR. SHUNK: I am sorry?

5 THE COURT: How much money they have on hand at the
6 moment or how much they have in the bank has nothing to do with
7 that theory. You are welcome to put that theory on, but what
8 they have in the bank has nothing to do with that.

9 MR. SHUNK: Actually -- well, what they have in the
10 bank, Your Honor, I'm sure Mr. Molster was using a more layman's
11 term for something very specific, and that is what in their --
12 in their Securities Exchange Commission filings they show as
13 being cash assets on hand.

14 Our expert is going to be able to say --

15 THE COURT: The cash on hand has nothing to do with
16 what they are making off the product.

17 MR. SHUNK: It does because they --

18 THE COURT: A thrifty company will have a lot on hand,
19 a spendthrift company will have little on hand, and yet they
20 have made the same amount off the product.

21 MR. SHUNK: Yes, but the cash that they have comes from
22 the sale of the products, and that shows that they are making
23 marginal profit from --

24 THE COURT: You can disagree with me, but what they
25 have on hand I find is not relevant.

1 MR. SHUNK: Very well. We disagree, Your Honor, but we
2 hear your ruling.

3 MR. MOLSTER: Your Honor, I don't know if they plan to
4 use -- there is one document, PX 192, it's a customer complaint
5 about LogMeIn two months after the company started in June 2004.

6 We don't think customer complaints about LogMeIn's
7 products are relevant. We're not making a damages claim in this
8 case. We don't see how it is relevant. Under the 403 analysis,
9 clearly the prejudice outweighs the relevance. And we ask that
10 that document not be used in front of the jury.

11 MR. SHUNK: I find that is an interesting argument
12 since they spent yesterday trashing our products with these, you
13 know, hearsay customer complaints.

14 But, in fact, we are not going to offer that exhibit,
15 so it's not an issue, Your Honor.

16 THE COURT: All right.

17 MR. MOLSTER: Takes care of that issue. We're going to
18 have a motion -- the plaintiff may well rest its case in chief
19 today. We will have a Rule 50 motion. We'd like to not make
20 that in front of the jury and just wanted to have a moment -- we
21 know we want to keep things moving, but we'd at least like to
22 have a moment to make that for the record.

23 And we'll be happy to give you any argument you are
24 interested in hearing about it.

25 THE COURT: Well, I will hear your Rule 50 motion. I

1 don't know whether we will do it at the side-bar or whether --

2 MR. MOLSTER: However you want to do it, Judge.

3 THE COURT: I never heard a Rule 50 motion in front the
4 jury.

5 MR. MOLSTER: No, we don't want to do it in front of
6 the jury.

7 THE COURT: I have never done it.

8 MR. MOLSTER: Okay. All right. But we just want to
9 make sure --

10 THE COURT: I don't think you can --

11 MR. MOLSTER: I don't think we should. All right.

12 THE COURT: I have never done that.

13 MR. MOLSTER: We are going to make the motion, just a
14 heads-up that we are going to make the motion.

15 THE COURT: Well, you can be pretty sure that I have
16 never heard a Rule 50 motion in front of the jury.

17 MR. MOLSTER: Thank you, Your Honor. The last thing
18 is, the witness -- we are probably going to get to our case in
19 chief today. Our second witness is Mr. Anka, who is in the
20 courtroom and who has a -- we would like to show a video that
21 shows sort of some animations as to how our system works, and
22 we'd like to do it on the screen. But we didn't want to do that
23 without getting prior permission from the Court, and we didn't
24 want to ask in front of the jury.

25 THE COURT: No, I thought I have said that you can show

1 the process. If there is something that shows the process you
2 have and what this patent involves, you may do it. How long is
3 it?

4 MR. MOLSTER: I think it's five minutes, less than five
5 minutes.

6 THE COURT: All right.

7 MR. MOLSTER: I think that's it, Your Honor. Thank
8 you.

9 MR. SHUNK: It turns out, Your Honor, I misspoke.
10 Ms. McKnight has an issue to raise with Your Honor.

11 THE COURT: All right. I love this housekeeping.

12 MS. MCKNIGHT: Good morning, Your Honor. I think if we
13 raise this one issue now, we may save a little time later.

14 This has to do with deposition designations of Michael
15 Donahue, which we are likely to read today. There is an exhibit
16 in those designations that, if we are able to get a stipulation
17 from the other side on two points that Donahue testifies to, we
18 don't need to go into his deposition testimony establishing that
19 exhibit and even entering that exhibit.

20 So, we are happy to explain the stipulation to you,
21 just it would be easier now. This is in the Donahue
22 declaration -- or deposition. It is PX 238. We are seeking a
23 stipulation that Tim Guest is still with the company and that he
24 is the product director.

25 MR. SIMON: He is actually the project manager as

1 opposed to a director.

2 Should I speak to the Court, Your Honor?

3 So, the person in question, Tim Guest, is a project
4 manager, which means he is responsible for coordinating the
5 activities of engineers. Which is different from being a
6 technical developer who would actually know what the activities
7 are.

8 So, I believe in both my deposition and others, that
9 the testimony is he's always been a project manager.

10 I don't know if that's a distinction that is important
11 to the Court. But just in terms of what he is, I think he is a
12 project manager, which is different from a technical developer.

13 MS. McKNIGHT: We have deposition testimony only that
14 he is the product director and that he is still with LogMeIn.
15 That's what we are seeking to have --

16 THE COURT: Well, that's all they want. He is a
17 project director?

18 MR. SIMON: I think --

19 THE COURT: And he is still with LogMeIn?

20 MR. SIMON: No, sir, he is not. He is actually no
21 longer with LogMeIn. He may have been two years ago at the time
22 of the disposition. He has subsequently left the company. But
23 I believe he was a product director who was with LogMeIn up
24 until 2010, if that's --

25 MS. McKNIGHT: Thank you, Your Honor. We will just

1 read the deposition.

2 MR. SIMON: I mean, is that --

3 MS. McKNIGHT: We will just read the deposition.

4 MR. SHUNK: It is very short. We will just read it.

5 THE COURT: All right.

6 MS. McKNIGHT: Thank you, Your Honor.

7 THE COURT: Bring in the jury.

8 NOTE: At this point the jury returns to the
9 courtroom; whereupon the case continues as follows:

10 JURY IN

11 THE COURT: All right. Good morning.

12 All right. Who is next?

13 MR. SHUNK: Your Honor, Plaintiff calls Michael Simon,
14 president of LogMeIn, as an adverse witness as if on
15 cross-examination.

16 NOTE: The witness is sworn.

17 MICHAEL SIMON, called by counsel for the Plaintiff,
18 first being duly sworn, testifies and states:

19 DIRECT EXAMINATION

20 BY MR. SHUNK:

21 Q. You are Michael Simon, is that correct?

22 A. Yes, I am.

23 Q. You are the chief executive officer of the Defendant in this
24 case, LogMeIn, correct?

25 A. Yes, I am.

1 Q. Now, from 1993 through 1994 you worked in Budapest at a
2 company called Ablaksoft, did you not?

3 A. From 1993 to 1994, yes, I did work for a company called
4 Ablaksoft.

5 Q. And it was during that time that you met Marton Anka, is
6 that correct?

7 A. Yes, I did. Marton was an intern for Ablaksoft. At the
8 time -- he is actually in the courtroom today, but at the time
9 he was --

10 Q. Thank you, sir. I just wanted to confirm that you met
11 Marton Anka at that time.

12 A. Yes, sir.

13 Q. In 1995 you moved to a company in Hungary called Uproar, is
14 that correct?

15 A. I did. It was originally called ePub, but it renamed itself
16 Uproar.

17 Q. And the business of Uproar was to build Web-based versions
18 of games like Family Feud and Bingo, is that correct?

19 A. Among other things, yes, sir.

20 Q. Now, during your time at Uproar, Marton Anka did consulting
21 work on software design for the company, did he not?

22 A. From time to time he did. He wasn't --

23 Q. And Mr. Anka eventually formed a company called 3am Labs, is
24 that correct?

25 A. I believe, to be specific, he formed a company with a

1 Hungarian name, it was 3am Laboratories Partnership.

2 LogMeIn, the company which I run right now and I work at, is
3 actually -- was originally called 3am Labs.

4 So, there is two different companies. His was 3am
5 Laboratories in Hungarian. LogMeIn was originally called 3am
6 Labs in English. They are two different companies, though.

7 Q. Your Honor, we are passing around the witness binders at
8 this point. I believe the witness binders include the
9 deposition of Mr. Simon as well.

10 So, you began working with Mr. Anka and the 3am team in the
11 fall of 2002, is that correct?

12 A. Approximately, we started discussing --

13 Q. Sir, I just need to know that you started in the fall of
14 2002. Is that correct?

15 A. I think you used the word "working," which implies
16 employment. But in terms collaborating or discussing, yes.

17 Q. So, I was right, you did start working -- because
18 collaboration is work -- you started working in the fall of
19 2002?

20 A. Fair enough, sure.

21 Q. Okay. And the product that Mr. Anka was selling
22 commercially at that time was a product called
23 RemotelyAnywhere, right?

24 A. Yes, it was.

25 Q. And in the fall of 2002, RemotelyAnywhere was not a remote

1 access service, it was software that the user paid for once,
2 correct?

3 A. That is correct.

4 Q. And it did not use a locator server in order to facilitate
5 one computer talking to another, correct?

6 A. No, it did not.

7 Q. In 2003 3am Lab -- is that the year that 3am Laboratories
8 became 3am Labs?

9 A. No. It may be a little bit confusing for the jury. But
10 essentially we created a new company called 3am Labs. It was a
11 new company. It is not the same body corporate or company that
12 changed its name. We created a new company called 3am Labs.
13 And it, in turn, purchased the assets of 3am Laboratories.
14 Think of it like an, you know, an acquisition, if you will, with
15 the way you might think of that.

16 Q. And in the very early days, you and Mr. Anka were 50/50
17 owners, correct?

18 A. For a few days we were equal -- we were 50/50 owners, and
19 then within a few days we brought in teams, but we owned the
20 same amount, roughly a third of the company each.

21 Q. And Mr. Anka contributed for his part the assets of his
22 company, 3am Laboratories, for example, the RemotelyAnywhere
23 product and its technology?

24 A. That is correct.

25 Q. Okay. And you contributed money, right?

1 A. Yes, I did.

2 Q. How much money did you contribute in order to start up the
3 company?

4 A. Well, we did -- I think the total investment I made early on
5 was \$191,000. And then additionally I extended what was known
6 as a loan, a credit facility or a loan, with my business partner
7 of \$500,000 to the company.

8 Q. Now, in 2003, sir, did the new company, the 3am Labs
9 company, did it show a profit?

10 A. I don't remember, to be honest. I don't believe so.

11 Q. In 2004, sir, did 3am Labs make a profit?

12 A. No, it did not.

13 Q. Okay. And 2004 was the year that LogMeIn Free was first
14 introduced to the public, is that correct?

15 A. Yes, it was.

16 Q. Now, in 2005, sir, did 3am Labs make a profit?

17 A. No, sir.

18 Q. And in 2006, I believe that was the year that the company
19 changed its name to LogMeIn, right?

20 A. I don't have any reason to disagree with that. I don't know
21 the year off the top of my head.

22 Q. In 2006, though, 3am Labs did not make a profit, did it?

23 A. No. I believe the first year we were profitable wasn't
24 until 2007.

25 Q. Well, are you sure about that? Wasn't it 2009, the year you

1 went public that you first showed a profit?

2 A. You may be right. I actually don't have our financial
3 statements in front of me right now.

4 Q. So, from 2003 through 2008, five years, even though LogMeIn,
5 the product, was available and you were giving away LogMeIn
6 Free, your company was not showing a profit during those years,
7 was it?

8 A. No, it was not.

9 Q. Well, sir, would you tell the jury how you kept the lights
10 on at your company if your company wasn't making any money?

11 A. During that period we raised roughly \$30 million of capital.

12 Q. And you raised that \$30 million of capital by telling
13 investors that you believed you had a great idea for marketing
14 the LogMeIn product, that is your freemium model, correct?

15 A. Yes. We had a business model that we often called freemium,
16 where we have both free and paid products. And our investors
17 and ourselves continued to believe it was a good business model,
18 and we did attract investment capital.

19 Q. Well, you certainly got a lot of free users, didn't you,
20 during that time?

21 A. Yes, we did.

22 Q. And the existence of those free users is what got the
23 investors to put money in the company and that's what kept the
24 lights on for your company during that time?

25 A. Actually, not quite. What really was more important to our

1 investors was the growth of sales, as you would imagine. Our
2 free users we believe played a part in generating sales, but
3 like you would expect, our investors were looking for us to grow
4 revenue and earnings and actually generate financial performance
5 rather than just an audience of free users.

6 Q. Well, now, in 2 -- let's think back to 2008. In 2008 your
7 company still hadn't made any profit. It had been in existence
8 for five years. The freemium model didn't look so good at that
9 time, did it?

10 A. Actually, it looked pretty good. I mean, it is subjective,
11 but we believed that it was actually generating growth, sales
12 growth. And it's not a perfect business model, the freemium
13 model, but it seemed promising for us, and it is the business
14 model we have continued to operate with.

15 Q. Certainly it wasn't the RemotelyAnywhere profit that was
16 keeping the lights on at your company, was it?

17 A. No, no. We still do sell RemotelyAnywhere. It is actually
18 built into sort of high-end storage network equipment. But it's
19 a very small part of our business. The majority of our business
20 is actually under our LogMeIn products.

21 Q. And RemotelyAnywhere is a small part of your business
22 because its really a product for advanced technical users. It's
23 not a product that everyday laypeople can easily make work, is
24 it?

25 A. Yes, I would agree with that.

1 Q. Okay. And in 2003, going back to that time period when you
2 first joined the team -- well, you joined the team in 2002.

3 In 2003 there were a fairly significant number of people
4 that downloaded a free trial of RemotelyAnywhere, but they were
5 unable to install, connect, or use it, right?

6 A. That is right.

7 Q. And, in particular, there were three areas that people would
8 get stuck when they used the RemotelyAnywhere product, dynamic
9 IP addresses, firewalls, and routers. If people had those
10 obstacles to overcome, they had to have some pretty technical
11 sophistication to make RemotelyAnywhere work, isn't that
12 correct?

13 A. Yes, this is correct. Those are the normal obstacles that
14 one faces with remote access if you are not a technical person.

15 Q. Unless, of course, you use the I'm InTouch product, then
16 they aren't a problem, are they?

17 A. I believe, no, they aren't.

18 Q. Okay. Now, one of the employees of 3am Labs in 2003 was a
19 man named Tim Guest, is that correct?

20 A. Yes, that is correct.

21 Q. At that time what was Mr. Guest's job? He was a project
22 manager, wasn't he?

23 A. I believe -- yes, I know he was.

24 Q. Now, Mr. Guest one of the people who was involved in
25 developing the LogMeIn service at your company, correct?

1 A. Yes, sir, he was.

2 Q. In fact, Tim Guest was the one who came up with the name
3 LogMeIn, right?

4 A. I believe it was Tim and another employee together had to
5 come up with hundreds of names and try and find one that would
6 work. And I believe we -- he was one who ultimately came up
7 with the name LogMeIn, which we now have named our company
8 after.

9 Q. Sir, do you have the binder of exhibits in front of you that
10 we have given you for today?

11 A. Yes, I do.

12 Q. Would you turn in it, please, to Plaintiff's Exhibit 41.

13 A. I have it in front of me.

14 Q. Do you recognize Plaintiff's Exhibit 41?

15 A. Yes, I do.

16 Q. Tell the jury what it is.

17 A. So, this is a product overview. It's basically a planning
18 document that is dated from the 2nd of July in 2003. It was
19 created by Tim Guest. And it outlines the plans for building
20 what ultimately became our LogMeIn Pro and Free business.

21 Q. But in 2003 that wasn't the working title for the project at
22 the company, was it?

23 A. No. Tim gave it an internal title, and the title of the
24 document is called GoToService-overview. And that was his sort
25 of internal code name for it.

1 Q. And GoToService, that was all run together, right?

2 A. Yes, sir. It is no spaces, GoToService, dash, overview.

3 Q. And GoToService, that was actually kind of a play on words
4 because GoToMyPC was the product your company was attempting to
5 be like, right?

6 A. I would only guess, but it seems reasonable.

7 Q. Seems reasonable. It sure does. Now --

8 MR. MOLSTER: Objection. He doesn't need to comment,
9 Your Honor, after he gives his answer.

10 MR. SHUNK: I apologize, Your Honor. I'll try to not
11 be --

12 MR. MOLSTER: It is inappropriate. He should stop,
13 Your Honor.

14 THE COURT: Objection overruled.

15 BY MR. SHUNK: (Continuing)

16 Q. Now, Mr. Simon, do you agree with Mr. Guest's assessment in
17 Plaintiff's Exhibit 41 that by making a service which is easy to
18 understand and use, we hope to gain revenue from the individual
19 home users that is otherwise lost with the current product
20 offering?

21 A. For the -- not quite. I would -- just to clarify, it says
22 individual home users. I think it would be more accurate to say
23 business users, but I think the underlying idea that we are
24 trying to serve a part of the market that isn't served by
25 RemotelyAnywhere, that isn't served, you know, isn't technical

1 people, if you will, is proper.

2 Q. And when there was a reference to the current product
3 offering, that meant RemotelyAnywhere, right?

4 A. Could you point me to it?

5 Q. Sure. That was the line I just read in the objective on the
6 first page.

7 A. Oh, objective. I am sorry, I don't see current offering. I
8 am sure it was RemotelyAnywhere, though. I just don't see it on
9 the fly.

10 Q. Now, down at the bottom of the first page, Mr. Guest says,
11 and I want to know whether you agree with him about this: The
12 service should be designed to be incredibly easy to set up and
13 use by the customer. The initial target group are the people
14 that download the free trial of the current RemotelyAnywhere,
15 but are unable to install, connect or use it.

16 A. Yes, that's what it says.

17 Q. And you agree with that?

18 A. I do.

19 Q. Now, sir, on the second page, Mr. Guest says that there are
20 several areas where the user gets stuck in the current
21 RemotelyAnywhere. We have to provide comprehensive help if the
22 user has trouble with any of the following.

23 Is that correct?

24 A. Yes, it is.

25 Q. And he identifies dynamic IP addresses, routers and

1 firewalls as the problem that RemotelyAnywhere had, right?

2 A. Yes, those are the principal issues that really are
3 obstacles for remote access services and for non -- people that
4 aren't technologists.

5 Q. So, those were the problems that your team was trying to
6 solve in 2003 that eventually led to LogMeIn, correct?

7 A. Not to mince words, but the one difference, we weren't
8 trying to solve the problem, we were trying to address it.

9 Q. Okay.

10 A. There is a slight difference. But, yes. Those are the
11 problems we were trying to address.

12 Q. Now, Mr. Guest made the suggestion that there be a periodic
13 pulse frequency, a ping, sent between the service and the host
14 about every 1.8 seconds, did he not?

15 A. Yes, he did.

16 Q. And he noted to the group that GoToMyPC sends a ping like
17 that every two seconds, didn't he?

18 A. He did.

19 Q. So, is there any doubt in your mind that Mr. Guest back in
20 2003 and your company generally were aware of GoToMyPC and how
21 GoToMyPC worked?

22 A. We definitely were aware of GoToMyPC, and we were -- we
23 don't -- to this day we don't exactly now how GoToMyPC works,
24 but you can, I think you have heard much testimony this day, you
25 can readily observe communication between a service like

1 GoToMyPC or LogMeIn with a packet sniffer. And so, they are
2 aware of this periodic communication, which is known as a ping.

3 Q. And that eventually led to your company creating a service
4 instead of a product and creating a server computer for that
5 service, is that correct?

6 A. It led us to create LogMeIn service. I don't know about a
7 server computer, wouldn't necessarily be the right way. We do
8 not have a server computer.

9 Q. Well, help the jury understand how the LogMeIn service
10 works, sir. If a user wants to use their service, use your
11 service, the user would download some software on to his, for
12 example, business computer that he wants to access, right?

13 A. That would not be the first step. I would be happy to
14 describe.

15 Q. Well, bear with me and go my path, if you would, for just a
16 few minutes. The first thing the user would have to do would be
17 to register, correct?

18 A. Correct.

19 Q. And then once the user registered, then the user would
20 download some software on to the business computer he wanted to
21 access?

22 A. We have multiple products and they all work slightly
23 different, depends which product you are talking about.

24 Q. I am asking about LogMeIn Free, just as an example.

25 A. Okay. So, yeah.

1 Q. Now, once the user had done that, then --

2 A. I am sorry. Could you back up, I wasn't sure which product
3 you were talking about, if you could please clarify the first
4 step. I just wanted to --

5 Q. Let's start all over again. I am talking about LogMeIn
6 Free, I want to know what a user does as the user uses it. The
7 first thing that the user does is go to, for example, your Web
8 page and follow the clicks until the user has been able to
9 register for using LogMeIn Free?

10 A. Yes.

11 Q. Okay. And then the next thing the user is invited to do is
12 to download software on to the computer that he wants to be able
13 to access, correct?

14 A. Yes.

15 Q. Okay.

16 A. Some time may pass. They are not required to do it
17 immediately, but at some point they would need to do that.

18 Q. I didn't say immediately, did I? If I did, I misspoke
19 myself.

20 Now, the next thing that happens is that if the remote, if
21 the user wants now to travel and to access the business
22 computer, he simply finds another computer that is connected to
23 the Internet. That would be the next thing that he would do,
24 right?

25 A. Could do, yes.

1 Q. Okay. And so, let's say the user is staying at the Westin
2 Hotel across the street, and the user has gone to the business
3 center and opened up a computer that is connected to the
4 Internet, the user now would again access the LogMeIn Web page?

5 A. Yes.

6 Q. And the LogMeIn Web page would invite the user to type in a
7 password and a user name, and that would allow then the user to
8 identify that business computer he had previously loaded the
9 software on to, right?

10 A. Yes.

11 Q. Okay.

12 A. Yes.

13 Q. And then the business user would click on the button, and
14 eventually they would see the desktop of the computer that they
15 had loaded the software on to previously, right?

16 A. Eventually. There is another password and things, but
17 eventually they would get to the point that they could actually
18 use their remote computer as LogMeIn is designed to do, yes.

19 Q. And the thing that makes that happen is that your company
20 operates a locator server -- I am going to take that word out so
21 that we don't fight over semantics.

22 Your company operates computers that it maintains control
23 over, and those computers then allow the connection from the
24 remote to the business computer, right?

25 A. Not quite. So, those computers implement part of that, but

1 there is other things that also are doing that. Our computer
2 system, which I think you have heard is quite extensive, is not
3 sufficient actually to enable that.

4 Q. I would like now, sir, to change to Plaintiff's Exhibit 1,
5 please, in your book.

6 Do you recognize that, sir?

7 A. Yes, I do.

8 Q. That's our patent, isn't it?

9 A. Yes, it is. It's a copy of your patent.

10 Q. The '479 patent. Now, you first became aware of that patent
11 when 01 sued the company called Citrix that the jury has already
12 heard about, correct?

13 A. Yes. Yes, sir.

14 Q. Now, you would agree with me, wouldn't you, that if your
15 competitors are sued, there is always a risk your company can be
16 sued, right?

17 A. Yes, I would.

18 Q. In fact, once your company learned about 01's lawsuit
19 against Citrix, that lawsuit was something that your company was
20 concerned about, right?

21 A. I am an employee of the company, and I was concerned about
22 it.

23 Q. Okay. Very good.

24 A. So, I think that's reasonable.

25 Q. And yet, even though your company was concerned about the

1 '479 patent back in 2006, isn't it a fact that you had not
2 personally read the '479 patent by the time I took your
3 deposition in March of 2011?

4 A. Yes. Others in the company had read the patent, I had not.

5 Q. Okay. Well, you are the president, right? You are the CEO?

6 A. Yes, I am.

7 Q. Okay. And you hadn't bothered to read the patent?

8 A. No. I am -- to this day, for me reading the patents is -- I
9 have to pour over them. I find them difficult to read and they
10 are very specific.

11 So, you know, I have read it multiple times now, but I am
12 not particularly expert in interpreting them. So, we actually,
13 obviously, have a technical team, and they would both know the
14 details of how we implement things and what the patent means.

15 Q. Well, maybe you are being a little bit too modest, sir. You
16 have a computer software engineering background, don't you?

17 A. I do. I have a degree in electrical engineering, and I had
18 a concentration -- today, where I went to school, which is Notre
19 Dame, for what it's worth, has a computer engineering program --
20 we didn't back in the '80s. So, I studied electrical
21 engineering, but I did actually study computer science.

22 Q. Now, I believe I heard in your previous answer you tell the
23 jury that since I took your deposition in March of 2011, you
24 have bothered finally to read the patent, right?

25 A. I have read it, yes.

1 Q. Okay. Well, by March of 2011 when I took your deposition,
2 this lawsuit had already been pending for some five or six
3 months, hadn't it?

4 A. I believe so, yes.

5 Q. And you still hadn't bothered to read the patent?

6 A. No, sir, I hadn't.

7 Q. And isn't it a fact, sir, that if Mr. Cheung, Andrew, had
8 spent the money for a 41-cent stamp, if that's what they still
9 cost today, and written you a letter and attached the patent to
10 it, you probably wouldn't have read it once you received it
11 because you just didn't seem interested?

12 A. I wouldn't agree with that. I would be very interested, but
13 I would obviously use our technical team to evaluate whether it
14 was a patent that we would find useful for our business.

15 Q. Okay. So, if Mr. Cheung --

16 A. To this day, I rely on our technical team on that.

17 Q. I am sorry, sir. If Mr. Cheung had written you that letter
18 with a copy of the patent, you would have brought in the
19 lawyers, right?

20 A. I don't know. I mean, essentially to evaluate the
21 technology, we may have done it ourselves.

22 Q. Take a look, sir, at Plaintiff's Exhibit 104.

23 A. Not to be problematic, I -- oh, there it is. I'm sorry, I
24 found it.

25 Q. Do you have 104 in front of you?

1 A. Yes, I do.

2 Q. That's a price list for your products from back in I believe
3 2007, is that correct?

4 A. Yes, it is.

5 Q. And how have those prices changed? I don't expect you to go
6 one by one and give me the dollars and cents, but have you
7 increased them, have you lowered them, have they stayed the same
8 over time?

9 A. If you give me a second to kind of look at the prices. They
10 may have changed some, but at least they are somewhat
11 consistent.

12 Q. Take a look at the LogMeIn Pro, the Pro2 price. There may
13 not be a Pro2 price.

14 Well, that's okay. Neither you nor I have the current data,
15 so let's move on?

16 What is the price today for LogMeIn Free? I know that is
17 kind a silly question, but I want to get it on the record.

18 A. It is actually free.

19 Q. Okay. What is the price today for LogMeIn Pro2?

20 A. We don't sell LogMeIn Pro2 anymore, it has been replaced by
21 a product simply called LogMeIn Pro. And that price is \$69 per
22 year. It is a subscription, so you pay annually \$69 per year,
23 typically.

24 Q. So LogMeIn Pro2 was replaced by LogMeIn Pro, or did you
25 misspeak and mean LogMeIn Pro3?

1 A. No, it is actually just LogMeIn Pro. We originally had the
2 2 designator. We have subsequently removed numbering. So, we
3 just call it LogMeIn Pro, and as it is updated from time to time
4 it stays with one name.

5 You might think, there used to be a Windows 95 and then
6 there's a Windows 7, sometimes there's just a Windows, maybe
7 something similar in naming that way. We don't use a number
8 anymore.

9 Q. Well, just to be clear, there isn't any real substantive
10 difference between what you now just call LogMeIn Pro and what
11 you used to call LogMeIn Pro2, is that correct?

12 A. There actually is a huge difference. So, LogMeIn Pro
13 includes not just remote access to it. So, LogMeIn Pro allows
14 you to print remotely, or synchronize folders, or conduct a
15 one-on-one meeting, or transfer a large file. LogMeIn Pro has
16 always done that.

17 With LogMeIn Pro2, we actually added functionality that we
18 felt was really useful for our old core user base, which is IT
19 professionals. We still, it's still a really important part of
20 our market, is IT professionals.

21 So, LogMeIn Pro2 took into one nice product functionality
22 that allowed, you know, you to work remotely or, for like your
23 IT department, to make sure your remote computer was healthy and
24 working well.

25 So, IT Pro2 actually has what we call an administer toolkit.

1 It allows you to actually -- it allows your IT department to go
2 in and make sure that your software is up-to-date. It alerts
3 the IT department --

4 Q. Sir, let me stop you because now that I hear your answer, I
5 think you misunderstood my question. I think you were telling
6 the jury about the difference between the original LogMeIn Pro
7 and what later became LogMeIn Pro2.

8 A. Yes, sir, I was.

9 Q. My question was whether there was any substantive difference
10 between the newest LogMeIn Pro, which has no number, and the
11 LogMeIn Pro2 which preceded it?

12 A. We think it is even better, but it's functionally somewhat
13 similar.

14 Q. Well, it does the remote access fundamentally the same as
15 the previous product, correct?

16 A. I believe so. I have to admit, because I don't actually
17 work on the engineering, I am strictly a business employee, to
18 my knowledge it works functionally the same, but I don't know
19 that I know the exact answer to that.

20 Q. Is it okay if this comes up again in our discussion,
21 Mr. Simon, that we call the newest LogMeIn Pro new LogMeIn Pro,
22 just so we don't confuse it as you did earlier with the original
23 LogMeIn Pro?

24 A. Okay.

25 Q. Okay. Now, what's the price today for LogMeIn Ignition, if

1 you still sell it?

2 A. It is, I believe, \$39 per year.

3 Q. What's the price for join.me Free?

4 A. join.me Free is an online meeting product that is free.

5 Q. And join.me Pro?

6 A. Again, it's a subscription product, so it's \$149 per year.

7 Q. Were you in the courtroom, I believe it was yesterday, when
8 portions of Mr. Anka's testimony was read to the jury?

9 A. Yes, I was.

10 Q. Do you agree with him, sir, that the join.me products,
11 join.me Free and join.me Pro, do remote access using the same
12 fundamental technology as the LogMeIn products?

13 A. You know, I certainly defer to his technical judgment.

14 Q. Isn't it true LogMeIn Free is the engine that drives the
15 sales of all the other products of your company?

16 A. Not quite.

17 Q. Take a look at Plaintiff's Exhibit 62, sir.

18 A. Yes, I have it in front of me.

19 Q. Do you recognize Plaintiff's Exhibit 62?

20 A. Yes, I do.

21 Q. Okay. It's a diagram that your company has used, at least
22 internally, in order to educate the employees of the company
23 about how the company develops its sales, correct?

24 A. It's used internally. It was used for a few months by a
25 person named Sean Ellis for his team. We don't necessarily use

1 it to educate the general employee base, but it was a document
2 that was used internally.

3 Q. You agree with it, don't you?

4 A. Some of it, but not all of it.

5 Q. Well, one of the things the document has is a big circle in
6 the middle that says free engine, and that seems to drive the
7 entire -- what's call the LogMeIn economic engine, right?

8 A. It does. If you look at the exhibit, it says free engine,
9 but there is important thing what free means. It is actually
10 part of a larger slide deck. And free, and it's very clear in
11 the slide deck, is free trials. The word "free," it's not the
12 Free product, and that's where this looks a little bit
13 confusing.

14 All of our products, from our most expensive product to our
15 least expensive product, actually has a free trial.

16 So, if you are we are to say free things are an important
17 part of driving all of our registrations, it is true. But it is
18 not the LogMeIn Free product, which is a specific product that
19 is at the center of this engine.

20 MR. SHUNK: Your Honor, I move the admission of
21 Plaintiff's Exhibit 104, the price list testified to earlier,
22 and Plaintiff's Exhibit 62 that the witness has just testified
23 to.

24 MR. MOLSTER: No objection to the price list. Object
25 to 62, it is an incomplete document, he just testified it is an

1 incomplete document, we don't believe it ought to be received
2 into evidence.

3 THE COURT: All right. Objection overruled, it will be
4 admitted.

5 MR. SHUNK: Thank you, Your Honor.

6 BY MR. SHUNK: (Continuing)

7 Q. Now, isn't that true, Mr. Simon, that without LogMeIn's free
8 user base, your company, LogMeIn, would have zero growth and be
9 a pretty terrible business?

10 A. Well, that requires speculation because we do have LogMeIn
11 Free, and one can only guess, and there is very different
12 opinions in our company, whether it does more harm than good.
13 But my personal belief is that it plays an important part of our
14 growth.

15 Q. Well, the words that I just said, those are actually words
16 that you said, that you wrote in --

17 A. Yes. Yes, it is. Those are words I wrote.

18 Q. I show you Plaintiff's Exhibit 92, sir. Would you flip to
19 that in the book.

20 And, Your Honor, so as to void any objections, we are
21 willing to redact the final paragraph in that document and
22 perhaps -- so, we will not discuss it with the jury.

23 THE COURT: What was the number?

24 MR. SHUNK: 62. 92, Your Honor, I am sorry.

25 BY MR. SHUNK: (Continuing)

1 Q. Let's turn, Mr. Simon, to the first paragraph. Do you not
2 say in the second sentence: Make no mistake, without our free
3 user base, we would have zero growth and be a pretty terrible
4 business?

5 A. Yes. This was written back in 2009 from me to our
6 employees. And in particular, the reason I had to write that is
7 there are many people in the company that disagree with that
8 premise. But ultimately the company holds the position,
9 particularly in 2009 when we were very much in an economic
10 recession, that we felt it was an important part of our growth
11 in that period.

12 MR. SHUNK: Your Honor, I move the admission of
13 Plaintiff's Exhibit 92 with the final paragraph redacted, and we
14 will prepare a redaction.

15 MR. MOLSTER: No objection as redacted.

16 THE COURT: Admitted.

17 BY MR. SHUNK: (Continuing)

18 Q. You bring up an interesting point, Mr. Simon. There have
19 been quite a few people in your company that aren't fond of the
20 idea of the freemium model, isn't that correct?

21 A. That is correct.

22 Q. Okay. And isn't it true that just because LogMeIn is
23 offering a product today for free, that's no assurance that that
24 product is going to be offered for free next year?

25 A. I don't know that there is any guarantees that we will

1 always have free products.

2 Q. Well, isn't it a fact that your company has plans to start
3 charging for its free products as soon as it has put its
4 competitors effectively out of business?

5 A. No, that is not correct.

6 Q. Don't you remember receiving an e-mail directly written to
7 you by Mr. Anka in which he is discussing TeamViewer and the
8 idea that TeamViewer could be put out of business using your
9 free model, and that's why he advocated not actually starting to
10 charge yet for the join.me product?

11 A. Essentially, you know, our business is to take --

12 Q. Well, wait a second, sir. I want to give you a full chance
13 to answer, but answer my question first.

14 A. I do remember an e-mail, yes.

15 Q. And when he said that to you, did you say, well, no, Marton,
16 that's not the way our business works and, you know, we are
17 always going to keep this product for free?

18 A. I don't remember what I said to him. I know we didn't take
19 his advice. First of all, we trying to win in, you know, what's
20 a competitive marketplace. We are trying to get business from
21 our competitors, as you would expect. They are trying to get
22 business from ourselves.

23 In particular, TeamViewer, you know, Marton suggested we
24 should only have a free meeting product. We did not do that.
25 We have a paid one.

1 And in fact, TeamViewer during that period, when they
2 introduced their product after we did, you know they were not in
3 business until after we introduced LogMeIn Free and continuing
4 business, and they actually generate over a hundred million --
5 they actually just filed to go public a few months ago and
6 generated over a hundred million dollars in revenue.

7 So, this notion of, hey, we are going to put them out of
8 business is obviously hyperbole. What we are really trying to
9 do is get business away from our competitors if possible,
10 drive -- grow our own business. Sometimes from time to time
11 people within our company say, hey, we're going to put them out
12 of business, but obviously that's over-reaching and not our
13 actual strategy and plans.

14 Q. Well, sir, let's take a look at Plaintiff's Exhibit 46.

15 You recognize Plaintiff's Exhibit 46, don't you?

16 A. Yes, I do.

17 Q. Well, let's start with the bottom half of the page, that is
18 actually the e-mail you sent to Mr. Anka that then generated his
19 response.

20 And, Your Honor, on this issue we discussed yesterday,
21 again, we are willing to do redactions so that we don't have to
22 deal with that issue.

23 Do you see that e-mail you wrote on June 11, 2009?

24 A. Yes, I do.

25 Q. You said to Mr. Anka, did you not, my bigger problem is that

1 a paying LogMeIn user thinks TeamViewer is "an awesome
2 application." The price is listed first, but then there are 11
3 other bullet points of why their product is so great.

4 That's what you said, right?

5 A. Yes, I did.

6 Q. So, tell the jury now, what exactly the TeamViewer
7 application is? It is a product like your join.me product,
8 right?

9 A. It's a product both like -- because TeamViewer has both
10 remote access, desktop remote access and online meeting
11 products, they compete against multiple of our products. And
12 they also have free products, like ourselves, different terms
13 and conditions in terms of when you can use them. But I think
14 it's indicative of how competitive this marketplace is. And for
15 people to be successful, it requires constant innovation and
16 improvement.

17 You know, we you don't just competent against TeamViewer, we
18 have dozens of both free and paid competitors in hosted remote
19 access. There isn't just two or three of us in this space by
20 any means.

21 Q. And Mr. Anka responding to you -- first of all, he agreed
22 with you, did he not? The first sentence of what he said to you
23 is: We have known for a while that TeamViewer was a very
24 compelling application. Even if you set pricing aside, if you
25 don't need any of the advanced Rescue features, there's no

1 argument against TeamViewer being a more elegant solution.

2 So, he agreed it was a pretty good product, right?

3 A. Just to clarify, you did misread that. You left out

4 "compelling application for certain use cases." I noticed

5 that --

6 Q. I'm sorry. I --

7 A. That's not quite what he had said across the board

8 compelling. But, yeah, it's -- we have to compete with

9 TeamViewer very -- we have to compete with Citrix and Microsoft
10 around Google and all kinds of other companies constantly trying
11 to innovate and make better products.

12 Q. So, do you agree then with his next statement: Users seem
13 to always find the path of least resistance, be that resistance
14 based on money, ease of use, aesthetics, et cetera. We've been
15 taking advantage of this with LogMeIn Free for years now. Now,
16 however, we've gotten to know how the GoToMyPC team felt a few
17 years back.

18 You see -- do you agree with that?

19 A. I think it's indicative very much that, you know, it's about
20 the passion this team has for delighting the customers. You've
21 got to make great products. Even if they're free, it's hard to
22 make a great free product.

23 And so, Marton is saying, well, people are going to go to
24 the best product, whether it's based on price, whether it's
25 based on performance, whether it's based on ease of use. So, I

1 do agree with him.

2 Q. And then Mr. Anka says to -- he gives you a suggestion for
3 how he proposes to "reconquer the territory," right? That's in
4 there?

5 A. He does. He does, yes.

6 Q. And he says -- his proposal to you was: That's why I'm not
7 enthusiastic, to say the least, about trying to turn Express
8 into a pay-for product on any level, at least not until it's
9 done its job and put our German friends out of business.

10 Right?

11 A. That's what it says. And as I did say, that's -- we did not
12 follow his advice --

13 Q. Well --

14 A. -- and they did very well.

15 Q. -- certainly it was Mr. Anka's feeling that the way that the
16 join.me product should be used is keep it free until TeamViewer
17 is out of business, then start charging for it. That's what he
18 suggested?

19 A. Again, I would say that putting someone out of business is
20 hyperbole, as we discussed before.

21 Q. Hyperbole or not, that's what he said, right?

22 A. That's what he wrote.

23 Q. Okay. Now, LogMeIn Free, you're planning to start to
24 monetize that, aren't you, start to tighten the noose and
25 restrict the number of things you can do with LogMeIn Free in

1 order to get more people to convert to LogMeIn Pro?

2 A. I don't think we're tightening the noose. We're always
3 trying to figure out how to get our free customers to switch and
4 become paying customers.

5 Q. So, for example, a few months ago you told the public that
6 no longer can LogMeIn Free be used on as many computers as you
7 want. You put a limit on the number of computers, right?

8 A. That's right. Historically you could use LogMeIn Free --
9 when you register and create an account, you could add as many
10 computers as you wanted. And most of our competitors that have
11 free offerings only allow one. And a few months ago we decided
12 that we would change our service so you get an infinite amount
13 of free computers just to 10.

14 And the rationale being if you have more than ten computers,
15 you're probably not an individual accessing your office or your
16 home. You're probably an IT department.

17 And we actually sell other products that are really
18 complementary and useful for IT departments, and particularly we
19 have security and deployment solutions.

20 You can if you're an individual -- and many, many people do
21 this -- is, you're not -- there's nothing that prevents them
22 from saying, look, I'm going to have ten accounts each with ten
23 computers. But for security reasons, you would have to have a
24 limit of ten computers as well. You would have to have a
25 separate password for each set of ten computers.

1 Q. Take a look at Plaintiff's Exhibit 79, please.

2 A. I'm sorry. I don't see one in my --

3 Q. I apologize, sir. Keeping track of the documents is not my
4 forte. I'm going to have to ask the Marshal if he could hand
5 you a copy of Plaintiff's Exhibit 79.

6 A. Thank you, Marshal.

7 Q. Now that we've spent the time to dig it up, I hope you
8 recognize it.

9 Do you recognize it there?

10 A. Yes, I do -- yes, I do recognize that.

11 Q. What is it?

12 A. This is a document entitled Understanding LogMeIn By the
13 Numbers. It doesn't have an author on it, but I do recognize
14 it.

15 Q. Well, it's a presentation that was created by your company,
16 isn't it?

17 A. Yes, it was -- it's created -- it's an internal confidential
18 documentation. At least it's labeled Company Confidential.

19 Q. So, this would have been something that would have been
20 shown to company managers and directors and that sort of thing?

21 A. I don't actually know who it would be shown to.

22 Q. And the date is in 2006, is that right?

23 A. Yes, it is.

24 MR. SHUNK: Your Honor, there has been no objection to
25 this document. I move its admission, Plaintiff's Exhibit 79.

1 MR. MOLSTER: No objection, Your Honor.

2 THE COURT: Admitted.

3 BY MR. SHUNK: (Continuing)

4 Q. Turn, if you would, sir, to page 4 of the document. You're
5 there already?

6 A. I am.

7 Q. Oh, my goodness, that's fast. I was looking at the paper
8 still.

9 Do you agree with the document statement that at least back
10 in 2009 88 percent of the trials for your product, the top five
11 origins of those trials are associated with free?

12 A. I think this is an important document because it actually
13 very much complements this free engine notion. What it says is
14 88 percent of the trials are associated with free, but it
15 actually lists specifically what free is. It -- you know, you
16 can actually see.

17 It explicitly said, this isn't our Free product. These are
18 the sources of the word "free" trial. For example, the number
19 one reason people try any of our products, if you go to our
20 website, there's a big green button most prominent that says,
21 try it for free. When you click on that, it asks you, what
22 would you like to do? Would you like LogMeIn Pro? Would you
23 like IT Reach or, excuse me, Central, et cetera.

24 So, it's not -- there's been some confusion because we have
25 a product called Free, but then everything we do has free

1 trials. And we use the word "free" as you do all over the
2 Internet. I mean, there is no shortage of freemium businesses.
3 There's no shortage of free products.

4 So, I think it would be a big mistake if you were to say,
5 oh, any time I see free, that means the LogMeIn Free product.
6 You have to look and, you know, actually see what it says.

7 Q. Right. Well --

8 MR. MOLSTER: Objection.

9 A. This document says very clearly --

10 MR. MOLSTER: I think the witness is entitled to finish
11 his answer.

12 THE COURT: Objection sustained.

13 A. This document very clearly lists free. Like, for example,
14 LogMeIn Free nav bar, that's a button on our website. You know,
15 it's a navigational thing you would see on our website. It's
16 not our Free product. And it's very clear and very explicit in
17 this document that we're not talking about the LogMeIn Free
18 product.

19 Q. Well, I don't know. Let's turn to page 43475 in that
20 document and see whether we get some more clarity. 43475.

21 A. Yes, sir, I am there.

22 Q. Now, on this particular slide, the first thing says that:
23 The free hook gets potential customers to our pages to register.
24 That's what you were saying, right?

25 A. I am. And, again, it defines what the free hook is. It's

1 the word "free."

2 Q. And then the registrations become trials, right?

3 A. Yes.

4 Q. And once the trials start, then the user gets hit with what
5 you call cross promos. Cross promotions of other products,
6 right?

7 A. It is. It does.

8 Q. And then trials of IT, Reach, and Pro become Rescue trials
9 and purchases, right?

10 A. And --

11 Q. So, what you're saving here is that the products that have
12 the free name associated with them actually lead to your
13 customers trying and purchasing related products in your family,
14 right?

15 A. Well, the unfortunate thing about this document -- and,
16 again I think it's important -- is the previous page actually
17 shows how it works. And there's -- there's been sort of this
18 notion that people start with free and then go and buy our
19 products later on, that somehow there's residual value.

20 And this document clearly shows when you try a LogMeIn
21 product -- when you first come and you register, you get a free
22 trial of one of our premium products. You get to pick. You
23 don't have to put in your credit card. You don't have to -- you
24 register and you -- you don't start with LogMeIn Free. You
25 actually start with LogMeIn Pro. And you don't have to pay for

1 it. You can you see whether, you know, the remote printing or
2 the remote administration tools are valuable for you.

3 And after a while, you're presented with, do you want to
4 keep using this? Do you want to buy it? If you do, yes, you
5 become a paying customer.

6 If not, at that point you become a free user. And it's
7 not -- there is sort of this belief that, hey, we get a bunch of
8 free users and somehow they magically turn into paid users. And
9 it is actually just the opposite. Once someone becomes a free
10 user, they're typically a free user forever.

11 And this document, you know, outlines when you start, you
12 register and then you go into a Pro trial, or you're asked what
13 type of product is useful for you rather than the opposite.

14 Q. Are you really testifying to this jury, sir, that it's your
15 belief that people who try -- who are -- who register as LogMeIn
16 Free users never upgrade to LogMeIn Pro?

17 A. No, sir, I'm not.

18 Q. I mean, that's the whole concept of your freemium model,
19 isn't it?

20 A. It actually is not quite that way because, essentially,
21 you -- if you think about intuitively our users, we serve every
22 type of user under the sun. Kids use -- if you've ever heard of
23 the game of Minecraft, people use our products to play Minecraft
24 with each other. My kids do that.

25 People use our products to deliver remote support to their

1 friends and family. You might -- if you have an elderly parent,
2 you might fix their printer at home. We have students. We have
3 teachers. We have government employees. We have CEOs of large
4 companies. We have students. We have all these types of users.

5 But in reality, there's two types of users that come to
6 LogMeIn, people that use it typically for work and it's mission
7 critical for them to actually work remotely, or people that are
8 IT professionals. They either -- the vast majority of our
9 purchases start early on because they've tried it and, yeah, I
10 want to keep it. And then others -- you know, a 14-year-old kid
11 really has no reason to ever buy LogMeIn Pro typically. And
12 given the preponderance of other free alternatives, once someone
13 says, hey, look I'm just looking for the free one, it's just
14 very rare in our business for people to upgrade to -- from free
15 to a Pro product.

16 Q. Turn to page 43477 in the document.

17 A. Which -- same exhibit?

18 Q. Yes.

19 A. Yes.

20 Q. Doesn't the second bullet point, Mr. Simon, say: Each free
21 registration has some value to us. It's averaged \$5.88 in the
22 last four weeks?

23 A. Yes, it does. And this --

24 Q. Then let's move on to --

25 A. Well, I think there's something that is really important

1 that says in this document --

2 Q. Well, Mr. Simon --

3 MR. MOLSTER: Your Honor, I think he's entitled to
4 explain his answer. He asked him the question. Maybe he
5 doesn't like the answer, but I think he's entitled to give him
6 his answer.

7 THE COURT: He can finish.

8 MR. SHUNK: Your Honor, this is cross-examination.

9 THE COURT: He can finish his answer.

10 MR. SHUNK: Very well, sir.

11 A. So, to make it simple, if 20 people show up for LogMeIn and
12 one person buys -- let's say they buy \$100 worth of products.
13 We're going to get \$100, 20 free registrations. Exactly
14 what's -- \$100 for 20 registrations. The average value per user
15 per registration is \$5, right? It's \$5 because we had 20 people
16 for \$100 in sales.

17 What I feel is trying to be put on -- in front of you or
18 what this -- you know, this notion that -- they're saying that
19 because you get \$5 per free registered user, you're actually 100
20 users would -- excuse me, your 20 -- let me get the math right.

21 Your 20 users would each generate \$100, so it would be
22 getting 20 times as much value. So, instead of you get \$100
23 from one user on -- they're saying you get somehow \$2,000.

24 That's -- and that's not at all true. All the money we
25 generate from our free registrations comes from the products we

1 actually sell. It averages out in this particular exhibit to
2 about \$5. But it's not \$5 for the one that paid and then \$5 for
3 everyone else so that we get \$100 per user. We only get the
4 \$100 once, not 20 times.

5 BY MR. SHUNK: (Continuing)

6 Q. Take a look at page -- at Plaintiff's Exhibit 68. I would
7 like you to identify some documents for us now.

8 MR. MOLSTER: I'm sorry. That was 68?

9 MR. SHUNK: Yes.

10 And while we're waiting for that, that Plaintiff's
11 Exhibit 79, I don't recall if I moved the admission of it, but I
12 do now. It was not objected to, Your Honor.

13 MR. MOLSTER: I think I already didn't object to that
14 one, Your Honor. And I continue to not to object to that
15 document.

16 THE COURT: It is admitted.

17 MR. SHUNK: Thank you.

18 BY MR. SHUNK: (Continuing)

19 Q. Do you have 68?

20 A. Yes, sir, I do.

21 Q. Do you recognize it?

22 A. I don't know the origin of it. I am familiar with the date
23 on it, I think.

24 Q. Well, if you don't recognize it, I won't ask you about it.
25 Do you recognize it?

1 A. I'm afraid I don't recall if I've seen this before.

2 Q. Let me ask you this, sir. How many -- how many users of
3 LogMeIn Free have there been over the years?

4 A. I believe it's about 16 million.

5 Q. 16 million. How many users of the join.me Free product have
6 there been over the years?

7 A. I believe it's roughly 9 million, 8 or 9 million.

8 Q. Take a look at Plaintiff's Exhibit 78.

9 Is Plaintiff's Exhibit 78 a press release that your company
10 issued?

11 A. Yes, it is.

12 Q. And doesn't it have as its headline, LogMeIn's meeting app,
13 join.me, hits 50 million participant milestone, now averaging
14 more than a million new users every month?

15 A. Yes, it does. The -- in the context of how we report a
16 user. This is actually saying how many people have ever
17 participated in a meeting. So, it includes the person that
18 hosts the meeting as well as the people that attend.

19 Q. Well, and, of course --

20 A. And -- and it also -- if you go to four meetings, you would
21 count four times rather than one person.

22 And when we talk about the numbers that we report for users,
23 it's actually the people that host a meeting. If you do one or
24 ten or 100, you're one person.

25 Q. Of course, everybody who is attending the meeting is using

1 the service, aren't they?

2 A. Yes, they are. Typically in our industry though, you never
3 sell for the people that use it. It's actually the person --
4 that attend. It's usually the host of a meeting that is counted
5 or licensed, whether it's free or paid.

6 Q. On the other hand, isn't it true that if the join.me service
7 infringes, then each of those users would be -- would be
8 conducting an infringing use of the product, right?

9 A. Well, first of all, we -- we vigorously believe join.me
10 doesn't infringe, obviously. We know it doesn't infringe. And
11 in terms of whether -- so, I actually -- in terms of whether the
12 participants would or wouldn't be covered by the patent, I can't
13 actually say whether it's the user or the participants.

14 Q. Take a look Plaintiff's Exhibit 118.

15 Do you recognize Plaintiff's Exhibit --

16 A. Okay.

17 Q. I'm sorry, do you recognize Plaintiff's Exhibit 118?

18 A. Yes, I do.

19 Q. It is, in fact, a slideshow of a presentation that you
20 yourself have demonstrated to potential investors of the
21 company, is it not?

22 A. I believe -- I believe it's been used with potential
23 investors.

24 MR. SHUNK: I move the admission of Plaintiff's
25 Exhibit 118. There's been no objection.

1 MR. MOLSTER: No objection, Your Honor.

2 THE COURT: It is admitted.

3 BY MR. SHUNK: (Continuing)

4 Q. Take a look at Plaintiff's Exhibit 48, please.

5 MR. MOLSTER: I don't think it's in the book.

6 Do you have it, Mr. Witness?

7 THE WITNESS: I don't believe -- let me just
8 double-check it.

9 MR. MOLSTER: The witness should have it in front of
10 him, please.

11 THE WITNESS: I don't believe it's in my book. Maybe
12 I'm --

13 MR. SHUNK: I would ask the Marshal to present that to
14 the witness, please.

15 THE MARSHAL: What's the number?

16 MR. SHUNK: 48, please.

17 A. Yes, I'm looking at Exhibit 48 now.

18 BY MR. SHUNK: (Continuing)

19 Q. What is it?

20 A. It's a LogMeIn Form 10-K.

21 Q. That's a filing with the Securities and Exchange Commission,
22 is it not?

23 A. Yes, it is.

24 Q. And in your capacity as chief executive officer you signed
25 and verified that -- all of the statements that are made in that

1 document, do you not?

2 A. Yes, I do.

3 MR. SHUNK: I move the admission of Plaintiff's
4 Exhibit 246 -- Plaintiff's Exhibit 48, I'm sorry.

5 MR. MOLSTER: No objection, Your Honor.

6 THE COURT: It is admitted.

7 BY MR. SHUNK: (Continuing)

8 Q. Take a look at Plaintiff's Exhibit 246. And that,
9 hopefully, will be in your original binder.

10 MR. MOLSTER: If it helps, I don't object to 246
11 either, Your Honor.

12 A. Okay, I am looking at Plaintiff's 246.

13 Q. What is 246?

14 A. So, it's a -- I would have to read it, but it's a form 8-K.

15 Q. And what does that -- why do you file that form with the
16 Securities and Exchange Commission?

17 A. This -- I would have to double-check and see which one this
18 is. But it's to actually disclose -- so, this is disclosing
19 financial information to the Securities and Exchange Commission.

20 Q. And on page 4 you -- you sign it and verify it, do you not?

21 A. Yes, I do. I -- yes, I do.

22 MR. SHUNK: I move the admission of 246, Your Honor.

23 THE COURT: It is admitted.

24 MR. MOLSTER: Still don't object.

25 BY MR. SHUNK: (Continuing)

1 Q. Would you turn to the sixth page of the document, Mr. Simon.
2 It's the page that says at the top: LogMeIn announces fourth
3 quarter and fiscal year 2012 results.

4 A. Yes, I do.

5 Q. Now, do you agree that for the fourth quarter of 2012 --
6 that would be the last three months of 2012, is that correct?

7 A. Yes, it is, the last quarter of the year.

8 Q. You reported that the net income for your company, according
9 to generally accepted accounting principles, was 2.2 million,
10 correct?

11 A. That is correct.

12 Q. But you also reported that under non-generally accepted
13 accounting principles for the fourth quarter the net income was
14 \$6 million, correct?

15 A. We did.

16 Q. Now, the difference between those two calculations of profit
17 had to do with reporting \$4.4 million in stock compensation
18 expense, did it not?

19 A. Among -- yes, that was part of it. There's multiple reasons
20 that are different that is required. But there's four million
21 in stock compensation and then other -- other costs as well.

22 Q. So, if the stock compensation expense had not been deducted,
23 your actual net income for your company would have risen from
24 \$2.2 million instead to \$6.6 million, correct?

25 A. I believe so, but I'm just trying -- there's two other

1 components. I want to make sure that -- that's -- I'm sorry,
2 I'm just trying to look to make sure I get the math right.

3 But I am certainly comfortable with the idea that under a
4 non-GAAP basis, which excludes other costs that are typically
5 noncash costs, that our -- our net -- non-GAAP net income in
6 fourth quarter would have been \$6 million.

7 Q. Now, those stock compensation expenses, those are -- that is
8 a line that indicates to the reader that the company -- that
9 insiders at the company have exercised stock options and have
10 seen a gain by exercising the stock option, correct?

11 A. I'm afraid that's totally incorrect. That's not how that
12 works under both GAAP and non-GAAP in financial reporting.
13 That's not what that means at all.

14 Q. Let me ask you this, sir. In 2012, for the year, what was
15 the -- what was the bottom-line profit shown by your company?

16 A. You know, I would have to look to make sure I get the
17 numbers right, but -- because it's actually part of this. It's
18 what we disclose every quarter.

19 So, our net income for 2012 was \$3.5 million.

20 Q. 3.5 million. Now, in that same year, isn't it true that you
21 personally made a profit of \$1.7 million on the sale of LogMeIn
22 stock?

23 A. Can I ask where you think you got that number?

24 Q. Well, I got it from looking through the SEC filings. Does
25 that sound right to you?

1 A. Yeah, I think -- I assumed that's where you got that number.
2 That's actually not what that says. I think you misunderstand
3 how stock compensation and its reporting in SEC filings works.
4 It has nothing to do with exercise or actually making any money.
5 That's just not fundamentally what it means. The cost is
6 incurred at the time the grants are made. It has -- you can
7 actually incur stock -- we have 575 employees, 575 employees.
8 If we give them options, then you get a situation where we have
9 to take a charge even if they never make a penny on them.

10 Q. Take a look at Plaintiff's Exhibit 63.

11 A. Yes, I'm looking at Exhibit 63.

12 Q. What is 63?

13 A. It was a schedule, I believe, that was prepared for this
14 litigation that talks about our revenue broken out from just
15 U.S. and worldwide and -- and then foreign revenue by product.

16 Q. Is it accurate?

17 A. I believe so, yes.

18 MR. SHUNK: I move the admission of Plaintiff's
19 Exhibit 63.

20 MR. MOLSTER: This is one of the documents that we
21 discussed, Your Honor. We don't have an objection to its
22 admission, but under seal.

23 MR. SHUNK: No problem, Your Honor.

24 THE COURT: Admitted.

25 BY MR. SHUNK: (Continuing)

1 Q. Take a look at Plaintiff's Exhibit 181.

2 A. Yes, I am looking at 181.

3 Q. What is it?

4 A. This is a document entitled Investor Relations Statistics.

5 Q. And that's something that is prepared, among other things,
6 for your use in communicating with your investors if the need
7 arises, correct?

8 A. It is, yes.

9 Q. Is it accurate?

10 A. I believe so, yes.

11 MR. SHUNK: I move its admission, Plaintiff's Exhibit
12 181.

13 MR. MOLSTER: Same situation. No objection if it's
14 filed under seal.

15 MR. SHUNK: No problem with the seal.

16 THE COURT: It's admitted.

17 BY MR. SHUNK: (Continuing)

18 Q. Is there is a Plaintiff's Exhibit 76A in your book,
19 Mr. Simon?

20 MR. MOLSTER: I don't have 76A.

21 Q. If I could hand the Marshal those items, the witness could
22 just look at it that way.

23 A. Yes, I am looking at 76A right now.

24 Q. Do you recognize 76A?

25 A. They're financial information, LogMeIn's income statement.

1 I don't know if I've seen it in this form. Was it something we
2 prepared for you?

3 Q. Well, this is something that was provided to us by your
4 company, so --

5 A. I would believe it's accurate then.

6 MR. SHUNK: I move its admission.

7 MR. MOLSTER: Subject to the same treatment,
8 Your Honor, under seal, we don't have any objection to 76A.

9 THE COURT: It is admitted under seal.

10 BY MR. SHUNK: (Continuing)

11 Q. Take a look at 76B. Same question.

12 A. I'm sorry. I'm just trying to understand what exactly I'm
13 looking at. But it's financial information, I believe, prepared
14 by our company.

15 MR. SHUNK: I move its admission, with the same
16 agreement to put it under seal.

17 MR. MOLSTER: No objection.

18 THE COURT: It's admitted.

19 BY MR. SHUNK: (Continuing)

20 Q. Finally, Mr. Simon, would you look at Plaintiff's
21 Exhibit 247.

22 A. Yes, I have it in front of me right now.

23 Q. What is Plaintiff's Exhibit 247?

24 A. It's a document entitled Purchase Price Allocation. It
25 relates to an acquisition of a small company we did called

1 Applied Networking.

2 Q. Was that an analysis that you commissioned to have done to
3 analyze certain financial aspects of your acquisition of the
4 company that had the Hamachi technology?

5 A. Yes, it is.

6 Q. And did your company utilize this document for its own
7 financial analysis purposes?

8 A. Yes, we did.

9 MR. SHUNK: I move the admission of Plaintiff's
10 Exhibit 247.

11 MR. MOLSTER: The same, no objection if we can file it
12 under seal.

13 MR. SHUNK: Agreed.

14 THE COURT: It's admitted under seal.

15 MR. SHUNK: Thank you, Mr. Simon.

16 THE COURT: All right, why don't we take a brief recess
17 at this time.

18 NOTE: At this point the morning recess is taken; at
19 the conclusion of which the case continues as follows:

20 MR. MOLSTER: May I proceed, Your Honor?

21 THE COURT: Yes.

22 MR. MOLSTER: Thank you.

23 CROSS-EXAMINATION

24 BY MR. MOLSTER:

25 Q. Still good morning, Mr. Simon.

1 A. Good morning.

2 Q. I would like to follow up on a few of the things that you
3 were asked in your examination by 01.

4 First of all, with respect to the patent, they showed you
5 their patent, PX 1. Do you remember that?

6 A. Yes, sir.

7 Q. And they asked you if you looked at it yourself?

8 A. Yes.

9 Q. Did you rely on your technical team for looking at the
10 patent back previous -- just before this lawsuit?

11 A. Yes. I continue to rely on our technical team for all
12 technology issues, including patent.

13 Q. Can you turn to Exhibit 78 that you were shown. I'm sorry,
14 yes, 78. Do you see that?

15 A. Yes, I do see that.

16 Q. Do you remember that was -- I believe you had testified that
17 there were about 9 million join.me Free registered users. Do
18 you remember that?

19 A. Yes, it's actually we track them without a registration, but
20 tracked users, yes.

21 Q. Tracked users?

22 A. Yes.

23 Q. And then Mr. Shunk showed you this document and said, well,
24 isn't it really 50 million. Do you remember this article?

25 A. I do remember that.

1 Q. And I just wanted to -- I believe your response was that it
2 is really 50 million participants, not actually join.me users,
3 is that correct?

4 A. Correct. So, it is actually a press release from LogMeIn.
5 It's our own press release. And it said that out of all the
6 meetings we've ever held, the total number of people that have
7 ever attended, whether it be once, a hundred times, a thousand
8 times, you know, the people that have ever -- the number of
9 participants in all the meetings, not the number of people,
10 participants -- and that's actually in the headline -- the
11 number of participants is 50 million.

12 So, if you use join.me once a week to meet with ten people,
13 that would be ten every week for 52 weeks, so 520 of those, not
14 just ten people. That's why it is a much larger number.

15 Q. Is the word "participants" actually in the title of the
16 press release?

17 A. Yes, it is.

18 Q. Could you just read the title of the press release for the
19 jury.

20 A. LogMeIn meeting app, join.me -- LogMeIn meeting app,
21 join.me, hits 50 million participants milestone, now averaging
22 more than a million new users every month.

23 Q. Thank you, sir. How about page -- Plaintiff's Exhibit 46,
24 could you look at that.

25 A. Yes, sir, I am looking at it.

1 Q. And do you remember -- I think Mr. Shunk was asking you
2 about the first paragraph, and I think that you had pointed out
3 to him that he left out a few words, but I am not sure that I
4 got that and I am not sure the jury got it.

5 So, could you just read that first sentence and indicate
6 where the words are that Mr. Shunk left out when he was
7 examining you about Plaintiff's Exhibit 46.

8 A. Yes. So, part of it says: TeamViewer was a very compelling
9 application. The actual e-mail says: A very compelling
10 application for certain use cases.

11 And Mr. Shunk had left out the "for certain use cases." He
12 just said it was a very compelling application.

13 Q. And so, is it fair to say that Mr. Anka in his e-mail was
14 limiting his comments on TeamViewer to certain use cases?

15 A. Yes, he was.

16 Q. Thank you. Let's take a look at Exhibit 79, because I think
17 this is one that Mr. Shunk asked you about and you said it was
18 an interesting document and an important document. And I think
19 you were trying to sort of explain the difference between Free
20 products and free trials. And I just want to make sure that the
21 jury is clear on that.

22 So, when you get to 79, please let me know.

23 A. Yes, I am looking at that.

24 Q. Okay. And maybe the easiest thing to start off with is,
25 could you just explain that us -- you have something called free

1 products, is that correct?

2 A. We have free -- a product called LogMeIn Free.

3 Q. Okay. And that doesn't cost money for users to use,
4 correct?

5 A. That doesn't cost.

6 Q. And do you have a free product called join.me Free?

7 A. Yes, I do. Yes, we do.

8 Q. And you have paid -- and you have paid products as well, is
9 that correct?

10 A. We do.

11 Q. And for the paid products, is there a free trial period? Is
12 that what you were saying?

13 A. Yes, there is free trials for all of our paid products.

14 Q. Is that common in your industry?

15 A. Extraordinarily common.

16 Q. Did you hear, in fact, Mr. Cheung say that his company
17 offers a free trial period for its I'm InTouch product?

18 A. Yes, I did. I was here.

19 Q. Okay. So, you have free trials, and then after a certain
20 amount of time you either convert -- hopefully they convert to
21 the paying product, is that correct?

22 A. That is without a doubt our goal, to get people to buy
23 products.

24 Q. About how long is that free trial period?

25 A. Can typically last anywhere from 14 to 30 days, depending on

1 the product.

2 Q. Okay. And did you -- as I recall, you were indicating this
3 document is important because it, in fact, is addressing free
4 trials as opposed to your Free products, is that correct?

5 A. Correct. It is both together.

6 Q. Okay. Is there any particular part of the document that
7 would be most helpful for us and the jury to understand the
8 document?

9 A. So, essentially through the document, it very clearly goes
10 through product by product and identifies trials by products.
11 And, in particular, on page 9 of this exhibit, it shows what
12 happens. And if it's okay, I will walk you through it again.

13 Q. Sure.

14 A. You register. And the registration and trying, it's free.
15 You start with free. Then you pick which type of product you
16 are going to use. It could be LogMeIn Pro, it could be join.me
17 if you are registering. And you start a trial.

18 And I should say, before you even start a trial, you pick a
19 product. And so, we are cross-promoting. You may have heard, I
20 heard about LogMeIn, I think they have a free remote control, I
21 need to fix a server or something.

22 So, you go there. And then we say, well, you know, we
23 actually have products just for IT professionals or we have
24 products just for accountants.

25 And we try and direct you -- you heard about LogMeIn Free,

1 but we try and direct you to one of our paid products. And,
2 typically, you don't have to pay anything, you don't have to put
3 it on a credit card, you don't have -- it is just a user name
4 and password. Just like literally in today's world hundreds of
5 thousands of other freemium business. It is perhaps the most
6 popular business model in all tech now.

7 If you go to -- if you're an iPhone user, you go to App
8 Store -- I don't know if there hundreds -- there are at least
9 tens of thousands, but I would guess at least hundreds of
10 thousands of free apps. You can use the free. They encourage
11 you to buy them, but most likely you're going to use the free.
12 Free is often good enough, very much the case. Only a small
13 percentage of our users ever pay.

14 But you start with a paid product or you get a free trial of
15 a paid product. And then after your trial is up, there is sort
16 of a decision, do I want to stay and actually continue using all
17 the extra features and pay for them, or do I just want to revert
18 to free.

19 For the vast, vast, vast, vast majority of our users, free
20 is good enough, and so they become free users.

21 Do they ever go from free back to pay? Yeah, sometimes.
22 But typically the majority of our purchases actually happen in
23 the beginning rather than the tail-end.

24 And I did a poor job, I think, in direct of trying to do the
25 math. I was kind of trying to give an example --

1 Q. I am not saying that, Mr. Simon. Go ahead.

2 A. Okay. But if I could just clarify. Again, if we sell \$100
3 worth of products to 20 users, the average revenue we get is \$5
4 per user.

5 There is not another \$5 per user elsewhere so that we are
6 magically getting another \$100 that that would imply.

7 Q. Could I just clarify --

8 A. And that would be double-dipping, I think.

9 Q. Okay. So, if you got -- the \$5 that you are talking about
10 is for both free users and paid users, is that correct?

11 A. Correct.

12 Q. All right. So, with respect specifically back to PX 79,
13 Plaintiff's Exhibit 79, I believe Mr. Shunk asked you about a
14 line that said: Each free registration has some value to us, it
15 averaged \$5.88 in the last four weeks.

16 Do you remember he asked you about that?

17 A. He did.

18 Q. Does that 5.88 include both free users and paid users?

19 A. And paid users. If you just try and say how much do we
20 generate from our free users, the math is very easy. I wouldn't
21 mess it up. It is zero. You know, our free users never pay us
22 anything. That's why it is called -- they are free products.

23 Q. Even I can do that math, Mr. Simon.

24 Let me ask you this. With respect to your company's
25 revenues, you get revenues from paid users, for paid products,

1 right?

2 A. Correct.

3 Q. And just to clarify, how many -- what revenues do you get
4 from customers that only use your free products?

5 A. Zero. And just for the avoidance of doubt, we don't put
6 advertisements or add words. They are genuinely free products.
7 We are not trying to use them as, you know, a way of hitting our
8 users with spam and e-mail and promoting third-party products or
9 credit cards like so often with free products. They are free
10 products. They are used by all kinds of people and they are
11 genuinely free.

12 Q. What kinds of people -- what kind of users use your product?

13 A. Without a doubt, it spans the entire universe. When we went
14 public in 2009, I realized that -- we did some research. I
15 realized there's 243 countries and territories in the world, at
16 least there were in 2009. We actually had free users in all
17 243. I mean, it is all over.

18 And the types of users -- you know, one of the most common
19 use cases is -- interestingly enough, it's to what we internally
20 in our company call friends and family support. It is where a
21 person is trying to give technical assistance to an elderly
22 parent.

23 How often -- you know, for the situations where like, oh, my
24 e-mail isn't working or I can't print, that is very common use.
25 That covers all kinds of people.

1 But if you kind of dig it into a little bit more, students,
2 teachers, government workers, defense contractors, Department of
3 Defense, Department of State. We have Fortune 500 company
4 users, military, police, you name it. You know, essentially it
5 is a free product. It is genuinely free and people tend to like
6 it.

7 Q. Do you have a 15-year-old boy like my kid who is a gamer?

8 A. If you have anyone that wants to play Minecraft with their
9 friends, we have a free product for them.

10 Q. Is this concept of -- I heard it referred to as the freemium
11 model. Are you familiar with that?

12 A. Yes, I am.

13 Q. Is that common in the Internet industry?

14 A. It is very common. I think anyone who has been on the
15 Internet knows that there's a large number of free things, not
16 just Facebook and Google, but actual applications and utilities.

17 If you actually search for remote access in Google, you'll
18 get dozens and dozens of solutions, including an enormous number
19 of free ones from people like Microsoft, from -- gosh, you have
20 Google has a free remote access, Microsoft has a free. There is
21 not just GoToMyPC, there is ShowMyPC, and all kinds of variants.

22 I mean, there are many, many free solutions in this space,
23 including some of our important competitors like TeamViewer.

24 Q. TeamViewer?

25 A. TeamViewer has a free solution.

1 Q. Let me ask you, I think you said you first offered your
2 products in April of 2004, is that right?

3 A. Correct, April 13 of 2004.

4 Q. And when did you first start offering free products?

5 A. A little bit later, September of 2004.

6 Q. So, how was it that you were able to offer free products
7 so -- in such a short time after you started your company?

8 A. Well, a lot of technical innovation went into reducing
9 our -- in our industry we call service delivery costs. How much
10 does it cost to actually support a free user because, as you can
11 imagine, we run servers, have bandwidth costs.

12 So, what we were able to do is come up with technology that
13 is now patented. We have five patents on our technology that is
14 largely -- those particular patents address to cost efficiency
15 and how we can make it very low cost. And then --

16 Q. Is that low cost for remote access?

17 A. Low cost for hosted remote access. So, essentially, there
18 was a desire early on to come up with a freemium business.

19 Again, as I said, it's one of the most common, if not the most
20 common business model in tech right now, and the technology --

21 Q. You have been in this courtroom the whole time, is that
22 correct?

23 A. Yes.

24 Q. As the corporate representative of LogMeIn?

25 A. Yes.

1 Q. Did you hear Mr. Stringer testify yesterday?

2 A. Yes, I did.

3 Q. Did you hear Mr. Stringer testify that his company, 01, had
4 a choice whether or not to offer a freemium model or not,
5 correct?

6 A. I did.

7 Q. And he indicated that he did not -- that his company decided
8 not to offer the freemium model, correct?

9 A. Yes, I do.

10 Q. And your company decided to offer the freemium model,
11 correct?

12 A. Yes, we did.

13 Q. Did you have a lot of money back in 2004 when you rolled out
14 your -- took the risk and rolled out your freemium product?

15 A. Well, not for a company. We had about \$800,000 in the bank
16 when we started, not particularly a lot of money.

17 Q. Would you turn to Exhibit 41, Plaintiff's Exhibit 41, that
18 Mr. Shunk asked you about.

19 Do you have that document in front of you, sir?

20 A. Yes, I do.

21 Q. And I think just to recap, one of the things -- he asked you
22 some specifics about this document. But I think that -- let
23 me -- before I get to that, let me ask you one more question.

24 Why did your company decide to offer Free?

25 A. We just thought it was a good business model. Essentially

1 the free products are a form of advertising for us. The free
2 products attract other users. It helps with word of mouth, as
3 you imagine. It is not the only marketing. We aggressively
4 have sales and marketing. But we feel that free users attract
5 other free users and sometimes they attract other paid users.

6 So, it is strictly something to build awareness of LogMeIn,
7 hopefully a good brand equity, and awareness of all our
8 products, not just our free products, but all of our products.

9 Q. And is your company pretty successful?

10 A. Pretty successful. We could be more successful, but we are
11 making some progress.

12 Q. Very good. Exhibit 41, if you would, please.

13 A. Yes, this is -- I have it in front of me.

14 Q. Okay. And this was a document from July 2 of 2003 and there
15 was some discussion about a Mr. Tim Guest. Do you remember
16 that?

17 A. Yes, I do.

18 Q. And I think Mr. Shunk asked you a little bit about your
19 background. You indicated you have an electrical engineering
20 degree from Notre Dame, is that right?

21 A. Yes, I do.

22 Q. When did you obtain that degree?

23 A. So, I graduated from Notre Dame in 1987.

24 Q. Did you ever work as software programmer?

25 A. I did. I started right after I finished university, I spent

1 five years working for McDonnell Douglas, the aircraft
2 manufacturer. I was actually a software -- originally an
3 associate, then regular engineer, then senior engineer doing
4 software systems for aircraft. Worked on number of ones, but an
5 airplane some of you might recognize is like an F-18. It's a
6 Navy and Marine airplane that I worked on.

7 Q. What kind of work were you doing when you were working on
8 the F-18 for McDonnell Douglas?

9 A. It's called avionics, but it's the embedded control systems
10 of an airplane.

11 Q. While you were working with McDonnell Douglas, did you go to
12 night school?

13 A. I did. I went to Washington University of St. Louis.
14 McDonnell Douglas is in St. Louis. And I studied for an MBA or
15 Master's of Business Administration at night.

16 Q. Did you obtain that degree?

17 A. I did. I graduated in 1992.

18 MR. SHUNK: Pardon me, Your Honor. This is beyond the
19 scope.

20 THE COURT: Objection sustained.

21 MR. MOLSTER: Your Honor, I think he opened the door
22 when he asked him about his background, but very well, Your
23 Honor.

24 BY MR. MOLSTER: (Continuing)

25 Q. Let's turn back to PX 41, please.

1 Now, on PX 41 there is a reference to the
2 GoToService-overview. Do you see that?

3 A. Yes, I do.

4 Q. Was that the project name within your company for that
5 product?

6 A. There was -- well, it was at least Tim Guest's code name. I
7 can't remember if we used that name for very long.

8 Q. And Mr. Shunk kept asking you questions about GoToMyPC and
9 whether this was going to be like the GoToMyPC and lots of
10 questions about that. Do you recall that?

11 A. I do recall that.

12 Q. GoToMyPC, that's not an 01 product, right?

13 A. No, it's not.

14 Q. 01's product is called I'm InTouch, is that right?

15 A. Yes, sir.

16 Q. What is the name -- whose product is GoToMyPC?

17 A. It is a product now of Citrix, the Citrix corporation.

18 Q. And they are not a party to this litigation, right?

19 A. No, sir, they are not.

20 Q. Okay. All right. So, let's go -- I think on the third page
21 he made a reference to ping. Do you remember his reference to
22 ping?

23 A. Yes, I do.

24 Q. Every two seconds?

25 A. Yes.

1 Q. Was -- when did you start working on the Internet space?

2 A. So, I really got into the Internet space in 1995. I was --

3 Q. When you first got into the Internet space in 1995, was ping

4 well-known?

5 A. Yes, it was. The actual ping protocol dates back to 1983.

6 It's a command that allows you to test communication between two

7 devices on the Internet.

8 Q. Dates back to when, I'm sorry?

9 A. 1983, at least according to Wikipedia, 1983.

10 Q. Did Mr. Cheung invent ping?

11 A. I don't believe. Not according to Wikipedia, no.

12 Q. How about Mr. Shunk asked you about page 2, some references

13 with respect to the RemotelyAnywhere project concerning dynamic

14 IP addresses, routers, and firewalls. Do you remember that?

15 A. Yes.

16 Q. And you have been sitting here the whole time and you heard

17 Mr. Cheung and other people talk about dynamic IP addresses,

18 routers, and firewalls, is that right?

19 A. Yes, I have.

20 Q. Okay. So, here is a reference to dynamic IP addresses,

21 routers, and firewalls in 2003. Is that the date of this

22 document?

23 A. Yes, it is.

24 Q. And do you know that to be two years before the patent ever

25 issued to 01?

1 A. Yes, it is.

2 Q. Okay. So, you all were dealing with this issue long before
3 the patent issued, right?

4 A. In fact, very long before.

5 Q. Okay. Well, let's talk about that. Had you worked with
6 Mr. Guest prior to 3am Labs or LogMeIn?

7 A. Yes. We actually worked together an awful long time ago,
8 almost 18 years.

9 Q. Okay.

10 A. He was an employee of ePub and then Uproar.

11 Q. All right. I want to talk about ePub and Uproar. Mr. Shunk
12 asked you some questions about them. Before I do, let's just
13 confirm.

14 There was a company called 3am Labs, Limited Partnership,
15 was a Hungarian company that Mr. Anka owned, is that right?

16 A. Yes.

17 Q. Then you and he hooked up and created a new company called
18 3am Labs?

19 A. Yes.

20 Q. And then did you change the name of 3am Labs to something?

21 A. LogMeIn.

22 Q. And when did you do that?

23 A. I believe it was 2006.

24 Q. Okay. Where did 3am Labs start off?

25 A. Actually it was founded in Marton's apartment in Budapest,

1 Hungary.

2 Q. Did at some point you move it to the United States?

3 A. Yes, we did. Our headquarters is now just north of Boston,
4 in Woburn, Massachusetts, a little suburb of Boston.

5 Q. When did you move the headquarters to the United States?

6 A. 2004.

7 Q. Okay. Let's go back to Mr. Guest and these three issues,
8 dynamic IP address, routers and firewalls. You referenced a
9 company called ePub?

10 A. Yes.

11 Q. Did ePub deal with remote access?

12 A. We did, very much.

13 Q. At what period of time did ePub deal with remote access?

14 A. Well, we had to get into and solve remote access problems
15 starting in 1995 when we started developing services for the
16 Internet.

17 Q. Did that include issues relating to dynamic IP addresses?

18 A. It did.

19 Q. Did it include issues relating to routers?

20 A. Yes, it did.

21 Q. Did it include issues relating to firewalls?

22 A. Yes, it did.

23 Q. How far before -- the patent issued in 2005 -- and you are
24 talking about 1995?

25 A. Yes, I am.

1 Q. All right. Tell us about ePub and what it was doing to
2 develop Internet products.

3 A. Well, ePub stands for electronic publishing. That's ePub,
4 it's not a bar something like that.

5 So, ePub was contacted -- I was the founder and CEO of ePub.
6 And in 1995 the Microsoft Corporation contacted ePub and myself
7 and asked for help with the launch of Windows 95, Windows 1995
8 or in 1995. And specifically they needed to create content for
9 their new online services.

10 And they -- essentially, Microsoft was just getting into the
11 space with Microsoft Network, which you might remember. And
12 Microsoft in general, and Bill Gates in particular, needed to
13 demonstrate that Microsoft was going to be a player in online
14 space.

15 So, we actually worked with Microsoft, actually went to a
16 bunch of presentations for engineers, but ultimately in
17 September of 1995 when Windows was launched in Europe, I
18 actually spent a day with Bill Gates where we were actually
19 showing, hey, this is what the Internet could be. This is what
20 Microsoft Network could be.

21 So, we got involved in what back then were two very new
22 technologies --

23 Q. I just want to stop you. When was it -- what year did you
24 spend the day with Bill Gates?

25 A. 1995.

1 Q. Where were you?

2 A. Budapest, Hungary.

3 Q. Go ahead.

4 A. So, what was interesting about that at least is he actually
5 did the announcement in the Parliament of Hungary. He was
6 treated like a state representative, even though it was a
7 commercial product.

8 Q. He should be. Go ahead.

9 A. So, essentially things that we take for granted 18 years
10 later were brand new. Java was just released in 1995. And what
11 is now known as ActiveX, the plug-ins, if you ever come across
12 that, were -- the predecessor of that was developed, and that's
13 particularly what we were, you know, exposed to.

14 And those fundamentally changed what you could do on the
15 Internet at that time. Up until that point, you could basically
16 download a document. But suddenly with those two technologies,
17 you could create much better, much more sophisticated type
18 things. Multiuser games, chat systems, remote access, and all
19 kinds of things, just to put a point on it.

20 Q. Did you create a product called ePub Information Exchange?

21 A. We did.

22 Q. Who created that product?

23 A. It was myself and the engineering team. Again, I led, if
24 you will, as the CEO. But our engineers, we together at ePub
25 created something called the ePub Information Exchange.

1 Q. Was Mr. Guest one of those engineers?

2 A. For part of the time.

3 Q. Did the ePub Information Exchange product allow remote
4 access?

5 A. Very much so. It's the reason it was created. So,
6 essentially at that time local area networks, computers behind a
7 firewall, were common. If you were behind -- you know, two
8 computers that were on one network, could readily print, could
9 readily share files, was -- you could use PC anywhere to do a
10 remote control. That was pretty well-known.

11 However, the reason we created ePub Information Exchange is
12 as soon as we wanted to create anything more sophisticated,
13 anything fun, anything useful, for the Internet, we had to solve
14 this problem, how do you get access between any two computers
15 that are not connected to the Internet, including the computers
16 that are connected behind the firewall or behind a router with
17 dynamic IP addresses.

18 So, the reason we created the ePub Information Exchange is
19 literally, as the name says, which is to exchange information.
20 And we used it for multiple purposes.

21 Q. Did the ePub system permit access to a computer that was
22 located behind a firewall?

23 A. Yes, sir.

24 Q. In 1995 and 1996?

25 A. It was launched in 1996. It was -- started development in

1 1995.

2 Q. Did the ePub system permit access to a computer with a
3 dynamic IP address?

4 A. Yes, sir, it did.

5 Q. Did the ePub system permit access to a computer behind a
6 router?

7 A. Yes, it did.

8 Q. Did the ePub system include a ping?

9 A. Yes, it did.

10 Q. Did the ePub system have a location facility?

11 A. No, it did not.

12 Q. You heard the testimony in this court about the '479 patent
13 and its requirement that it have a locator server computer with
14 a location facility, did you?

15 A. I did hear that.

16 Q. Okay. Did the ePub system use a locator server computer
17 with a location facility back in the mid-'90s?

18 A. No, you didn't need one.

19 Q. Why not?

20 A. Well, because any Web server -- as you know, when you log
21 onto a Web site, it can send you information. Web servers can
22 always send information, they know how to find computers.

23 So, by simply exploiting or working in conjunction with an
24 off-the-shelf Web server in 1995 and 1996, you could instantly
25 solve that problem, essentially by piggybacking on the sessions

1 between computers and -- it's a technical term, but a session is
2 a durable connection, if you will, a connection between a
3 computer and a Web server.

4 If you use a ping or a keep-alive pulse or heartbeat, those
5 sessions stay alive. And as long as those sessions are alive,
6 you can send information between any two computers that are
7 connected to the Internet.

8 It's a problem that we ran into and all of our people that
9 were developing products back in 1995 and 1996, if they wanted
10 to do anything sophisticated, they ran into immediately. And we
11 did as well, and we were able to solve it simply using a
12 solution that was readily available on the market.

13 Q. Did you sell the ePub Information Exchange system
14 commercially, sir?

15 A. What we did, we really had four different uses for the ePub
16 Information Exchange.

17 Q. When did you first sell the ePub system commercially?

18 A. Well, if I could explain the four uses, maybe that will give
19 you a sense. So, it was used for chat, for multiuser games, for
20 online meetings and remote access.

21 We started in 1996 originally with multiuser games in August
22 of '96. But then in December of 1996, December of 1996 we
23 started selling the ePub Information Exchange products not as a
24 game online, but actually for business use and other use.

25 Q. Can you think of any significant customers of any of the

1 services offered by the ePub Information Exchange in the
2 early -- in early 1997?

3 A. Yes, in --

4 MR. SHUNK: Pardon me, counsel. I want to object and I
5 wonder if we could approach the bench with regard to this
6 objection?

7 THE COURT: All right.

8 NOTE: A side-bar discussion is had between the Court
9 and counsel out of the hearing of the jury as follows:

10 AT SIDE BAR

11 MR. SHUNK: Your Honor, it sounds as though the
12 defendant is trying to argue that this ePub thing was prior art.

13 It has never been disclosed to us in an expert report,
14 it was not, more importantly, in the notice of prior art that's
15 statutorily required 30 days before trial. And there has been
16 no production of any details of this ePub thing to us.

17 So, we would object to them putting up -- we have heard
18 a little bit about what he was doing as a company, but now it
19 seems like they are going to argue that this somehow invalidates
20 our patent.

21 This is complete surprise. And we would ask that they
22 not be permitted to try to insinuate to the jury that somehow
23 this ePub, whatever it is, is invaliding prior art to our
24 patent. They simply have never given us notice as required by
25 this Court's orders as well as by the statute in advance of

1 trial.

2 MR. MOLSTER: I'm not arguing it is prior art. We
3 haven't asserted -- there is no patent on it. But he did open
4 the door. He put in a document where Mr. Guest talked about
5 remote access, he talked about firewalls, he talked about ping,
6 he talked about IP addresses.

7 He tries to make it look like we stole the idea. This
8 fellow has been doing it along with Mr. Guest since 1995. He
9 completely opened the door to it.

10 MR. SHUNK: Your Honor, that sounds like he is trying
11 to argue it's prior art to me. I don't understand why they
12 didn't give us this.

13 THE COURT: Objection overruled.

14 MR. MOLSTER: Thank you, Your Honor.

15 NOTE: The side-bar discussion is concluded; whereupon
16 the case continues before the jury as follows:

17 BEFORE THE JURY

18 BY MR. MOLSTER: (Continuing)

19 Q. Let's go back to where we were, Mr. Simon. Can you think of
20 any significant customers of any of the services offered by the
21 ePub Information Exchange in 1997?

22 A. I believe the biggest customer was Nortel. Nortel paid
23 \$40,000 to actually purchase the ePub Information Exchange
24 product.

25 Q. Was Nortel in 1997 a telecom company?

1 A. Yes, it's the company -- it's a Canadian-based company that
2 actually makes telephone equipment. Many people have used their
3 the -- desktop phones and other things --

4 Q. You took my question from me.

5 A. Nortel is -- it's a world. I think I said Nortel is a
6 Canadian-based telecom company that makes telephone equipment.

7 Q. You stole my thunder. You took my question from me. Where
8 is Nortel located?

9 A. It is headquartered in Canada to my knowledge.

10 Q. Thank you. Did you present to any other customers, your
11 ePub Information Exchange product to any other customers?

12 A. We did. We marketed it worldwide. And we also presented it
13 at Internet World at the Javits Center in New York City in 1997.

14 Q. Your Honor, I would like to hand up, if I may, the trial
15 exhibit binder for Mr. Simon. One for the Court and one for the
16 witness.

17 Sir, did you present to a company called Centris?

18 A. Yes, sir, I did.

19 Q. When?

20 A. In 1997.

21 Q. Did that presentation relate to remote access?

22 A. Yes, sir, it did.

23 Q. How did it relate to remote access?

24 A. They wanted to resell an online meeting and remote access
25 solution built on the ePub Information Exchange.

1 Q. Would you please turn to DX 294 in your binder.

2 A. Yes, sir, I am looking at it.

3 Q. Is that a copy of the presentation to Centris Management on
4 September 4 of 1997 regarding the ePub product?

5 A. Yes, sir, it is.

6 Q. Did you present to a company called Scala?

7 A. Yes, I did.

8 Q. Was this a remote access product that you presented to
9 Scala?

10 A. Yes, we did, it was a desktop remote control solution.

11 Q. Could you please look at Exhibit DX 296 and tell the jury
12 what that document is.

13 A. So, this document is the marketing presentation we did to
14 Scala. It is dated -- excuse me, which one are we looking at?

15 Q. 296.

16 A. 296. It's dated January 29, 1997, and it outlines what we
17 were trying to sell to them.

18 Q. Were you at all involved in authoring each of these
19 documents and making those presentations?

20 A. Yes, sir, it has my initials, Michael Kelly Simon, M.K.S.
21 '97 on it.

22 MR. MOLSTER: Your Honor, I move for admission DX 294
23 and 296.

24 MR. SHUNK: Objection to both as hearsay. These are
25 just statements from this company. They are not admissions.

1 THE COURT: Objection overruled.

2 BY MR. MOLSTER: (Continuing)

3 Q. Could you please turn to the -- page 8 of the Centris
4 presentation.

5 A. Yes.

6 Q. Are you on page 8?

7 A. Yes, I am.

8 Q. Are where it says: Front Line Product Rollout?

9 A. Yes, sir.

10 Q. Is there a chart there?

11 A. Yes, there is.

12 MR. MOLSTER: Your Honor, may I have permission to put
13 on the board the chart so the jury may see it and Mr. Simon can
14 point out the relevant portion?

15 MR. SHUNK: I would object, Your Honor, it is not a
16 diagram. It is just --

17 MR. MOLSTER: It's in evidence, Your Honor.

18 THE COURT: What is it?

19 MR. MOLSTER: Its just a chart out of the document.

20 MR. SHUNK: It is just words, Your Honor.

21 MR. MOLSTER: That was part of the presentation.

22 THE COURT: All right, put it up.

23 BY MR. MOLSTER: (Continuing)

24 Q. Is this page 8 of the presentation to Centris in August
25 of -- September of 1997?

1 A. Yes, sir, it is.

2 Q. Just, if you would, for the jury, just read Stage 1, what do
3 those words say?

4 A. Stage 1 was conferencing or online collaboration, online
5 meetings.

6 Q. And how about the next paragraph?

7 A. I am sorry, that was part one. So, the Stage 1 was online
8 meeting, online conferencing and online collaboration and online
9 customer support with remote computer access.

10 Q. Could you please -- may the witness have permission to
11 approach the chart and underline in red "remote computer
12 access"?

13 MR. SHUNK: Objection, Your Honor.

14 THE COURT: We have seen it.

15 MR. MOLSTER: You think its good enough?

16 THE COURT: I think its good enough.

17 MR. MOLSTER: Thanks, Your Honor. Can I have the next
18 chart, please. This is from the Scala. One more, we're done.

19 MR. SHUNK: The same objection, Your Honor.

20 THE WITNESS: Marshal, I think it is upside-down.

21 THE COURT: Objection overruled.

22 BY MR. MOLSTER: (Continued)

23 Q. Turn to page 7310 in the Scala presentation, which is DX
24 296, if you would, please.

25 A. Yes, sir, I am looking at it.

1 Q. Is that a screen shot there?

2 A. Yes, this is an enlarged version of this particular slide
3 that we presented to Scala.

4 Q. What does it show?

5 A. So -- may I use the pointer?

6 Q. Sure.

7 A. So, what it shows is actually bidirectional remote access to
8 any two computers on the Internet. It's a little -- gives you
9 an idea of how old it is, this is actually a DOS screen being
10 delivered into an Internet Explorer window.

11 Q. What year -- what month and what year did you make that
12 presentation, sir?

13 A. This was presented in January of 1997.

14 Q. Thank you. I don't need those charts up anymore, Marshal
15 Williams, thank you very much.

16 I think you indicated you started -- you released LogMeIn's
17 first product on April 13 of 2004, is that right?

18 A. That is correct.

19 Q. When did you first start developing the product?

20 A. At LogMeIn?

21 Q. Yes, sir.

22 A. In 2003.

23 Q. About how long did it take you to develop the product before
24 you ultimately launched it?

25 A. 13 months or so. 13, 14 months.

1 Q. Did you first hear of 01 Communique before or after you
2 developed and introduced your first product in April of 2004?

3 A. After.

4 MR. MOLSTER: I don't have any further questions at
5 this time. I do reserve to call him in my case in chief given
6 some of the scope objections, Your Honor.

7 THE COURT: All right.

8 MR. MOLSTER: Thank you.

9 MR. SHUNK: Very briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. SHUNK: (Continuing)

12 Q. Mr. Simon, do you recall testifying in response to
13 Mr. Molster's question that free is a form of advertising for
14 us?

15 A. Yes, I do.

16 Q. And just so that we are not confused about free now, we are
17 talking about --

18 A. Can I clarify?

19 Q. Well, I was about to ask you for the clarification.

20 MR. MOLSTER: Let's let him finish answering his
21 question, if we may, please.

22 THE COURT: Well, I thought he had finished and we are
23 going on to another area. Ask your next question and let's move
24 along.

25 MR. SHUNK: Thank you, Your Honor.

1 BY MR. SHUNK: (Continuing)

2 Q. By free, you mean the LogMeIn Free and the join.me Free
3 products, correct?

4 A. In context of that question, it is LogMeIn Free product.

5 Q. LogMeIn Free, okay. Okay. Now, wouldn't you agree with me,
6 Mr. Simon, that there are a lot of different free giveaways that
7 are used as advertising, by a lot of different companies?

8 A. Yes, I would.

9 Q. So, for example, if I am a plumber and I want to make
10 sure -- I want to try to get my name out there, I might give
11 away refrigerator magnets with the name of my company on it for
12 free, right?

13 A. Okay.

14 Q. And that's a kind of marketing?

15 A. Yes.

16 Q. So, but I would still have to buy those refrigerator magnets
17 that I am giving out for free because the person who actually
18 makes the magnets is going to expect to get paid, right?

19 A. Okay.

20 Q. Okay. So, the risk of that kind of free advertising is that
21 I might buy boxes of magnets, but I don't get any additional
22 customers, and so I'm out the money that I spent to buy the
23 magnets, right?

24 A. Okay, fair enough.

25 Q. And in the same way, sir, isn't it true that when you give

1 away LogMeIn Free for free, you are taking the risk that maybe
2 no one will convert from being a LogMeIn Free user to a LogMeIn
3 Pro user, for example?

4 A. Yes, we believe that, you know, it was, you know, a gamble,
5 a risk, that LogMeIn took because we bore the cost. We were the
6 magnet manufacturer in your analogy.

7 Q. But in the same way that the magnets have a value, your
8 LogMeIn Free still has a value whether it works as advertising
9 for you or not, right?

10 A. Fair enough. But the magnets' value would not exceed how
11 much you charge for your plumbing.

12 Q. I don't know. That depends on the product and the free
13 giveaway, right?

14 A. I don't think so.

15 Q. Well, let's go on to the next question.

16 You were asked several times about whether this or that
17 event happened before the patent that Andrew Cheung was awarded
18 issued in 2005, you remember those questions from Mr. Molster?

19 A. I believe so, yes.

20 Q. Now, that's not the important question. The real question
21 is whether they happened before 2000 when the patent was applied
22 for or before 1997 when Mr. Cheung had his invention, right?

23 A. Some of those questions, yes.

24 Q. Yeah. So, it was a bit misleading to ask about whether they
25 occurred before 2005, right?

1 A. No, I don't believe so. I don't --

2 MR. MOLSTER: Objection. I think he's asking for legal
3 conclusions. This is clearly not a patent lawyer. I think his
4 question is -- embedded in his question are legal conclusions as
5 to what --

6 THE COURT: Well, it's certainly argumentative anyway.
7 The objection is sustained.

8 MR. MOLSTER: I object. Thank you, Your Honor.

9 BY MR. SHUNK: (Continuing)

10 Q. Well, let me ask you this, sir. 2000, the year that the
11 patent application was filed by Mr. Cheung with the U.S.
12 government, that was a long time before 3am Labs even existed,
13 right?

14 A. Just a couple years, two years.

15 Q. And it was a long time before the LogMeIn product was even
16 developed, right?

17 A. It was a couple years, yeah, three years.

18 Q. Now, you testified to the jury about ePub Information
19 Exchange. That product did not use a server computer in order
20 to have the remote access, correct?

21 A. It used servers, but not -- it used, you know, server --
22 computer servers were part of the solution.

23 Q. Yes, I know. But it didn't -- it was not a service
24 providing a server to allow the communication the same way that
25 LogMeIn is today?

1 A. No, sir, it was.

2 Q. And so, let's be real clear for the jury. LogMeIn does not
3 use this ePub technology you testified about today?

4 A. Actually, we use the underlying approach that was developed
5 at ePub. LogMeIn was founded by roughly 12 engineers, the vast
6 majority of which actually came directly from Uproar and ePub.

7 Q. And yet in the document that we looked at and that
8 Mr. Molster asked you questions about that's dated in 2003, the
9 company still defines obstacles for remote access that include
10 dynamic addresses, firewalls, and routers, right?

11 A. Actually, I don't think it --

12 Q. Well, hold on a second.

13 A. I don't think that's the word.

14 MR. MOLSTER: I'm sorry, Your Honor. I think it's only
15 fair that the witness be allowed to finish his answer.

16 THE COURT: You did interrupt him very quickly in this
17 answer. Objection is sustained.

18 MR. MOLSTER: Thank you, Your Honor.

19 A. Just to be very, very clear, it doesn't say obstacles. It
20 does not use that word. There are several areas where people
21 get stuck. Not obstacles.

22 Tim -- you know, Tim Guest absolutely was familiar with
23 these areas. They weren't presented as obstacles. That's not
24 the word. It's like RA doesn't do these things, let's add --
25 solve these things. It's not listed as obstacles at all.

1 BY MR. SHUNK: (Continuing)

2 Q. Well, but they were problems that needed to be overcome in
3 the development of the LogMeIn product, right?

4 A. No, they were not.

5 Q. Well, RemotelyAnywhere didn't do these things, did it?

6 A. No, it didn't. But that didn't mean they were problems that
7 couldn't be solved that weren't readily understood by Tim Guest
8 and all of his people from the mid-'90s how to solve them.

9 Q. Now, your lawyers have never asserted in this case, have
10 they, that ePub is somehow invalidating prior art?

11 MR. MOLSTER: Objection.

12 A. Not at all.

13 MR. MOLSTER: Please. Objection, Your Honor. He's
14 getting into legal issues that are completely irrelevant to the
15 questions or are inappropriate for Mr. Simon.

16 MR. SHUNK: Well, Your Honor, I think the jury -- I
17 think there should be some clarity as to the reason why this
18 testimony was offered. I think we should be able to make it --

19 THE COURT: Objection sustained.

20 BY MR. SHUNK: (Continuing)

21 Q. And you have an expert witness, Dr. Bhattacharjee, right?

22 A. Yes, we do.

23 Q. And Dr. Bhattacharjee is going to come in and talk about the
24 arguments that he has about the validity of Mr. Cheung's patent?

25 MR. MOLSTER: The same objection, Your Honor. We're

1 just wasting time.

2 THE COURT: Well, objection sustained to have him
3 comment on some other witness' testimony we haven't even heard.

4 MR. SHUNK: I was just going to ask, Your Honor,
5 whether or not --

6 MR. MOLSTER: He just sustained the objection. Go
7 ahead.

8 MR. SHUNK: Oh, I see. You're standing there waiting
9 for it.

10 No other questions, Your Honor.

11 MR. MOLSTER: Thank you, Your Honor, I don't have any
12 further questions for Mr. Simon at this time.

13 THE COURT: You may step down.

14 NOTE: The witness stood down.

15 Who's next?

16 MR. SHUNK: Your Honor, we're going to read some very
17 short snippets from some depositions. The first deponent from
18 whose deposition we're going to read is Mr. Donahue, who's the
19 internal company attorney, and was also the 30(b)(6) witness on
20 the issues of that deposition.

21 THE COURT: All right.

22 MR. SHUNK: Ms. McKnight is going to do the questions.

23 MS. MCKNIGHT: Yes, Your Honor. And a colleague of
24 ours, Will Hellmuth, will read the deposition testimony of
25 Mr. Donahue.

1 THE COURT: All right.

2 NOTE: The deposition of Michael J. Donahue is read
3 into the evidence as follows:

4 BY MS. McKNIGHT: (Reading)

5 Q. Could you please state your full name for the record.

6 A. Michael Joseph Donahue.

7 Q. And what's your current position?

8 A. Vice-president and general counsel.

9 Q. So, what is Exhibit PX 238?

10 A. It seems to be an organizational chart for LogMeIn.

11 Q. Is this the current organizational chart for LogMeIn?

12 A. It was current -- I believe it was current at the time it
13 was produced.

14 Q. What e-mail system does LogMeIn use?

15 A. I don't know the answer to that.

16 Q. Do you use e-mail?

17 A. I do.

18 Q. What software do you use?

19 A. The interface itself is Microsoft.

20 Q. Outlook?

21 A. Outlook.

22 Q. Topic 13 to Exhibit 3 states, "all matters pertaining to
23 LogMeIn's third affirmative defense that 01's claims are barred
24 in whole or in part by laches, estoppel, and/or other
25 doctrines."

1 Are you prepared to testify as to topic 13?

2 A. Yes, I believe I am.

3 MS. FERRERA: Your Honor, we would like to read just
4 the previous question and answer to the next designation, which
5 is page 56, line 6 through line 21.

6 MS. McKNIGHT: Your Honor, we have no objection to that
7 except for line 6 through 12 are not directly before. We would
8 be happy to read 15 through 21 which lead into our designated
9 portion.

10 MS. FERRERA: That's all, Your Honor.

11 BY MS. McKNIGHT: (Reading)

12 Q. What's the factual basis for LogMeIn's defense that 01's
13 claims are barred by estoppel?

14 A. Again, that 01 failed to notify LogMeIn of any claims and
15 LogMeIn continued to sell its products, invest in its products,
16 develop its products.

17 Q. Does LogMeIn claim that 01 made any affirmative
18 representation to LogMeIn that support LogMeIn's defense that
19 01's claims are barred by estoppel?

20 A. Not that I'm aware of.

21 Q. Does LogMeIn claim that 01 made any affirmative
22 representations to LogMeIn that LogMeIn contends support its
23 defense of laches?

24 A. No, not that I'm aware of.

25 Q. Does LogMeIn contend that 01 made any public statements that

1 support LogMeIn's defense that 01's claims are barred by
2 estoppel?

3 A. I'm not sure of the answer to that.

4 Q. Does LogMeIn contend that 01 made any public statements that
5 LogMeIn believes supports its defense that 01's claims are
6 barred by laches?

7 A. Again, I'm -- I don't know the answer to that question.

8 Q. Well, I'm just looking to find out if LogMeIn believes that
9 there's anything 01 did or said that LogMeIn relied upon.

10 A. They didn't -- they didn't inform us of any claims.

11 Q. Okay. If 01 had informed LogMeIn that 01 believed LogMeIn
12 infringed, say back in 2006, what actions would LogMeIn have
13 done differently?

14 MS. FERRERA: Objection, speculative, hypothetical,
15 Your Honor.

16 MS. McKNIGHT: Your Honor, he has -- LogMeIn has
17 identified Mr. Donahue as the corporate representative to
18 testify to these legal issues.

19 MS. FERRERA: The question still calls for speculation.

20 THE COURT: Objection overruled.

21 A. I can't speculate as to that.

22 BY MS. McKNIGHT: (Reading)

23 Q. Is there a specific investment that LogMeIn would have
24 decided not to make if it had known that it was accused of
25 infringement by 01?

1 MS. FERRERA: The same objection, Your Honor.

2 THE COURT: Objection overruled.

3 A. I don't know the answer. I would have to speculate to give
4 that.

5 BY MS. McKNIGHT: (Reading)

6 Q. Is there any particular business opportunity that LogMeIn
7 would have passed up if it had been accused of -- if it knew
8 that it had been accused of infringement by 01?

9 A. Again, that -- I can't make that speculation.

10 Q. When did LogMeIn first believe that it might be infringe --
11 that it might sued for infringement of the '479 patent?

12 A. Well, when we learned that Citrix was sued, obviously Citrix
13 being a large player in the market, you know, one could -- one
14 could believe that the possibility that we could be next.

15 Q. If 01 had sued LogMeIn for infringement of the patent in or
16 around February 2006, would LogMeIn have stopped manufacturing
17 the accused products?

18 A. I can't speculate as to that.

19 Q. Are there any defenses that LogMeIn would have asserted in
20 this litigation that it is unable to because records have been
21 lost due to the passage of time?

22 A. I don't know the answer to that.

23 Q. Are there any defenses that LogMeIn would have asserted in
24 this litigation that it is unable to assert because witness
25 memories have faded?

1 A. Again, I can't speculate as to that.

2 Q. Are there any defenses that LogMeIn would have asserted in
3 this litigation that it is unable to do so because witnesses are
4 no longer available?

5 A. The same answer, I can't speculate.

6 MS. FERRERA: And, Your Honor, with respect to that
7 designation, we would like to read page 84, line 1 to 5, and 21
8 through 25 and the first line of the next page, which are the
9 immediately proceeding question and answer.

10 THE COURT: All right. Go ahead.

11 BY MS. McKNIGHT:

12 Q. What harm has LogMeIn suffered as a result of 01's alleged
13 delay in bringing suit against LogMeIn for infringement of the
14 '479 patent?

15 A. So as I mentioned in one of my earlier answers, LogMeIn
16 continued to obviously sell its products, invest in its
17 products, the development of its products, continued to grow its
18 business.

19 Q. Had 01 sued LogMeIn earlier than it did, would LogMeIn have
20 stopped selling its products?

21 A. I can't speculate as to that.

22 Q. What development would LogMeIn not have undertook if it had
23 been sued earlier by 01?

24 A. Same answer, I can't speculate as to what might have
25 happened.

1 Q. If 01 had sued LogMeIn earlier than it did, would LogMeIn
2 still have grown its business?

3 A. I don't know what would have happened.

4 MS. McKNIGHT: Thank you, Your Honor. We have no
5 further testimony from Mr. Donahue.

6 THE COURT: All right.

7 MR. SHUNK: Your Honor, next we would read a similarly
8 brief designation from Mr. Bardos' testimony. He's another
9 employee of LogMeIn.

10 I believe Ms. McKnight is going to read that as well.

11 THE COURT: All right.

12 MS. FERRERA: And, Your Honor, our colleague, Andres
13 Arrubla, will read the part of Mr. Bardos.

14 NOTE: The deposition of Kevin Bardos is read into the
15 record as follows:

16 By MS. McKNIGHT: (Reading)

17 Q. Good morning, Mr. Bardos. Can you state your full name for
18 the record, please?

19 A. Kevin Albert Bardos.

20 Q. By whom are you currently employed?

21 A. LogMeIn, Incorporated.

22 Q. How long have you been employed by any LogMeIn entity?

23 A. Since January of 2004.

24 Q. What has your title or titles -- what have your title or
25 titles been during that period?

1 A. Yes, there was partner manager, and then I believe there was
2 product development manager and then director of product
3 development and then vice-president product development and now
4 vice-president collaboration products.

5 Q. First of all, there is a Free version of join.me, is there
6 not?

7 A. There is.

8 Q. And there is a Pro version of join.me?

9 A. Correct.

10 MR. MOLSTER: I would like to read the next question
11 and answer and the next question and answer after that, please.

12 THE COURT: All right.

13 BY MS. McKNIGHT: (Reading)

14 Q. Explain to me what the feature differential is between those
15 two products.

16 A. There are some additional features in the Pro version.

17 Q. And what are those additional features?

18 A. Such as the scheduler and the ability to have a personal
19 link. There are some other small things.

20 Q. Is it referred to as join.me and Free, or is there some
21 other name used to describe that product within the LogMeIn
22 corporate entity?

23 A. join.me Free and join.me Pro are the two variants.

24 Q. And when were the products commercially launched?

25 A. In October.

1 Q. Of 2010?

2 A. Correct.

3 MS. McKNIGHT: Thank you, Your Honor. There's no
4 further testimony by Mr. Bardos.

5 MR. MOLSTER: None from us. Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 MR. SHUNK: Your Honor, we will next, with the Court's
8 permission, read a similarly brief designation from the
9 testimony of Laura Pasquale, another employee of LogMeIn.

10 Ms. McKnight will read the questions.

11 MS. McKNIGHT: Yes, Your Honor. A colleague of ours,
12 Amy Tolbert, will read the testimony by Laura Pasquale.

13 NOTE: The deposition of Laura Pasquale is read into
14 the record as follows:

15 BY MS. McKNIGHT: (Reading)

16 Q. Can you state your full name for the record, please.

17 A. Laura Pasquale.

18 Q. Who is your employer?

19 A. LogMeIn.

20 Q. When you began at LogMeIn in December of 2004, what was your
21 title?

22 A. Brand marketing manager.

23 Q. Is that what you are today, marketing manager?

24 A. VP marketing communications.

25 Q. If you could take a look at Deposition Exhibit 2 from

1 Mr. Burton's deposition this morning, PX 62.

2 Have you seen this document before?

3 A. Yes.

4 Q. Do you know who created the document?

5 A. Yes.

6 Q. Who?

7 A. Sean Ellis.

8 Q. Who is Sean Ellis?

9 A. He used to run marketing at LogMeIn.

10 Q. Did you work for him?

11 A. Yes.

12 Q. Did Mr. Ellis talk about the document when he gave it to
13 you? Did he explain it to you?

14 A. Yes.

15 Q. What did you understand the phrase "free engine" inside the
16 big circle in the middle to mean?

17 A. People using LogMeIn Free.

18 Q. Showing you what's been marked as Plaintiff's Exhibit 118.

19 Let me ask whether you've ever seen that document before?

20 A. Yes, at least in part.

21 Q. Moving ahead two pages to page 5247. Do you see the caption
22 Seed Market With Free Products?

23 A. Um-hmm.

24 Q. What does that mean to you?

25 A. It means marketing with Free.

1 Q. Using LogMeIn Free as a marketing tool to obtain paying
2 customers?

3 A. It's actually two products cited here, but, yes.

4 Q. Free and Hamachi?

5 A. Yes.

6 Q. Turn three more pages over, please, to page 5251. Do you
7 see the conclusion on that page, lifetime value of user greater
8 than \$5?

9 A. Yes.

10 Q. What does that mean to you?

11 A. Of all our users, that there's a greater than \$5 value put
12 there.

13 MR. MOLSTER: Your Honor, I would like to read -- or
14 have read, a few lines down on page 35, line -- one question and
15 one answer, lines 9 through 17.

16 MS. McKNIGHT: Your Honor, it's on the other page,
17 quite a few lines past.

18 MR. MOLSTER: It's completely relevant to what she just
19 read.

20 THE COURT: I believe it is.

21 MS. McKNIGHT: We would be happy to read it.

22 BY MS. McKNIGHT: (Reading)

23 Q. You would agree with me, though, wouldn't you, that there is
24 some monetary value that is associated with LogMeIn Free users
25 because the company gets benefit from having people using their

1 Free product?

2 A. I would not agree with you. I would agree that there's a
3 value, not a monetary value.

4 Q. You're the vice-president of marketing and communications.
5 Does your group have a budget that it gets each year or each
6 quarter?

7 A. Yes.

8 Q. What is your group's budget currently?

9 A. Currently it is approximate five million a quarter.

10 Q. Give me some examples of the online marketing -- online
11 advertising that you do.

12 A. Search marketing, banners, e-mail, newsletter sponsorships.

13 Q. Search marketing, for example, would be Google Adwords?

14 A. Correct.

15 Q. Have you ever purchased search words or a search terms that
16 included the names of competitors or competitor products?

17 A. Yes.

18 Q. When you make a purchase of search terms, how does that
19 work? You pay -- you bid a certain amount?

20 A. Yes.

21 Q. And if you are the successful bidder, then if someone types
22 those search words into a search engine, your paid ad will pop
23 up -- well, it will not pop up, it will appear?

24 A. Yes.

25 MR. MOLSTER: So, two lines down, Your Honor, we would

1 like to start on page 79, 19, through 80, line 6.

2 THE COURT: All right.

3 MS. McKNIGHT: That's fine, Your Honor.

4 BY MS. McKNIGHT: (Reading)

5 Q. So your advertising will appear on the page along with
6 whoever else has also purchased that search term?

7 A. Correct.

8 Q. Again, focusing on today, can you think of the names of any
9 other competitors or competitive products for which you have
10 purchased the search terms?

11 A. We have roughly 3,000 of them out of 20,000 search terms.
12 So, yes.

13 Q. Have you purchased 01 Communique or Communique as part of a
14 search term?

15 A. Yes.

16 Q. And on what date did you begin purchasing 01 Communique?

17 A. It was in '04.

18 Q. Okay.

19 A. Or maybe it was '05. I'm sorry. Early years.

20 Q. Has LogMeIn continuously purchased the Communique name since
21 2004 as part of all of the search terms that it bids on?

22 A. Yes.

23 MR. MOLSTER: And then we would just like the next
24 question and answer, Your Honor.

25 MS. McKNIGHT: We would be happy to read it.

1 BY MS. McKNIGHT: (Reading)

2 Q. Can you tell me the names of some of the other competitors
3 whose names you have purchased?

4 A. Sure. GoToAssist, Laplink, VNC, Remote Desktop, Web X.
5 Those are some I can think of.

6 MS. McKNIGHT: Thank you, Your Honor. That's all the
7 testimony we would like to have from Ms. Pasquale.

8 MR. MOLSTER: Fine with us, Your Honor. We don't need
9 anything more.

10 THE COURT: All right.

11 MS. McKNIGHT: At this point, Your Honor, I would like
12 to move into admission evidence Plaintiff's Exhibits 118 and
13 238.

14 MR. MOLSTER: I'm sorry. I thought it was 118 and 62?

15 MS. McKNIGHT: That's already admitted.

16 MR. MOLSTER: We just need to see 238. Or we can do it
17 and admit it later, whatever you want.

18 MS. McKNIGHT: Your Honor, we'll address this later.
19 We don't want to hold up the Court. We'll get them a copy and
20 we can address it later.

21 MR. MOLSTER: All right. Thank you, Your Honor.

22 MS. McKNIGHT: Thank you.

23 MR. SHUNK: Your Honor, our final deposition
24 designation to read is Mr. James Kelliher, chief financial
25 officer of LogMeIn. We're happy to start immediately. It's

1 about a 30-minute reading or so. At the Court's pleasure.

2 THE COURT: It will take you 30 minutes? Well, why
3 don't we recess now for lunch until 2:15.

4 NOTE: The morning portion of the proceedings on
5 March 20, 2013, are concluded.

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17 I certify that the foregoing is a true and
18 accurate transcription of my stenographic notes.

19

20

21

22 /s/ Norman B. Linnell
Norman B. Linnell, RPR, CM, VCE, FCRR

23

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25